

EXHIBIT 6

Page 479

1 SUPREME COURT : STATE OF NEW YORK
2 COUNTY OF ROCKLAND : CIVIL TERM

2 -----x
3 ANNE BRYANT,

4 Plaintiff, Index No.
5 Index No.
6 5192/2000

7 -against-

8 BROADCAST MUSIC, INC, (a/k/a "BMI"),
9 CLIFFORD A. "FORD" KINDER, KINDER & CO.,
10 LTD., VADIVOX, LTD., JULES M. "JOE"
11 BACAL, GRIFFIN BACAL, INC., STARWILD
12 MUSIC BMI, WILDSSTAR MUSIC ASCAP, SUNBOW
13 PRODUCTIONS, INC. and JOHN AND JANE DOES
14 1 - 10,

15 Defendants.

16 -----x
17 ANNE BRYANT,

18 Plaintiff, Index No.
19 2821/2002

20 -against-

21 SUNBOW PRODUCTIONS, INC.,

22 Defendant.

23 -----x
24 NON-JURY TRIAL - CONTINUED
25 ANNE BRYANT - DIRECT-EXAMINATION
- CROSS-EXAMINATION

26 Rockland Supreme Court
27 One South Main Street
28 Suite 200
29 New City, New York 10956
30 July 9, 2004

31 B E F O R E:

32 HON. ANDREW P. O'ROURKE
33 JUSTICE OF THE SUPREME COURT
34
35

<p>1 APPEARANCES:</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 MONAGHAN, MONAGHAN, LAMB & MARCHISIO, ESQS.</p> <p>4 150 West 55th Street</p> <p>5 New York, New York 10019</p> <p>6 BY: PATRICK J. MONAGHAN, JR., ESQ.</p> <p>7 -and-</p> <p>8 JEFFREY C. PRIMIANO, ESQ.</p> <p>9</p> <p>10 FOR THE DEFENDANT, SUNBOW:</p> <p>11 PATTERSON, BELKNAP, WEBB & TYLER, LLP.</p> <p>12 1133 Avenue of the Americas</p> <p>13 New York, New York 10036-6710</p> <p>14 BY: GLORIA C. PHARES, ESQ.</p> <p>15 -and-</p> <p>16 LAUREN HAMMER BRESLOW, ESQ.</p> <p>17</p> <p>18 FOR BMI:</p> <p>19 JUDITH M. SAFFER, ESQ.</p> <p>20 Assistant General Counsel - BMI</p> <p>21 320 West 57th Street</p> <p>22 New York, New York 10019-3790</p> <p>23</p> <p>24 ALSO PRESENT: NEIL RIGBY</p> <p>25</p> <p>26 ROBERT FRITZ SENIOR COURT CLERK</p> <p>27</p> <p>28 ELIZABETH A. KENT SENIOR COURT REPORTER</p>	<p>Page 480</p> <p>1 - PROCEEDINGS -</p> <p>2 MR. MONAGHAN: And the terms of the</p> <p>3 settlement will be confidential as per the</p> <p>4 Defendant's request.</p> <p>5 THE COURT: All right. Well, Mr. Bacal, I</p> <p>6 hate to have you leave. You and Miss Bryant seem</p> <p>7 to have had a good relationship in the past.</p> <p>8 MR. BACAL: We did.</p> <p>9 THE COURT: I hope you and Anne -- and she</p> <p>10 calls you Joe -- I hope you get back to that on a</p> <p>11 level soon. Thank you very much. Thank you,</p> <p>12 counselors. And you are excused.</p> <p>13 MR. MONAGHAN: I'm sorry, one other item we</p> <p>14 were going to unless -- there were documents that</p> <p>15 were produced recently, and for the limited</p> <p>16 purpose, unless counsel for Sunbow will stipulate</p> <p>17 to them, we were going to put Mr. Bacal on simply</p> <p>18 to identify them and that would be it.</p> <p>19 MR. BACAL: I would be happy to do that.</p> <p>20 MR. TANNENBAUM: I think we can do that</p> <p>21 here.</p> <p>22 MR. MONAGHAN: Yeah, actually, you know,</p> <p>23 David, I think it's only --</p> <p>24 THE COURT: Just have counsel stipulate to</p> <p>25 it.</p>
<p>1 - PROCEEDINGS -</p> <p>2 (Convened: 10:00 a.m.)</p> <p>3 (Convened: 10:45 a.m.)</p> <p>4 (Non-jury trial resumed on the record, in</p> <p>5 open court - counsel and parties present as</p> <p>6 previously noted)</p> <p>7 THE COURT: Good morning, ladies and</p> <p>8 gentlemen. I understand that one party is leaving</p> <p>9 us?</p> <p>10 MR. MONAGHAN: Yes, your Honor. That would</p> <p>11 be Defendant, Jules M. "Joe" Bacal.</p> <p>12 CAROL A N N E B R Y A N T,</p> <p>13 the Plaintiff, previously duly sworn</p> <p>14 by the Court, resumed the stand</p> <p>15 and testified further as follows:</p> <p>16 THE COURT: Anything you want to put on the</p> <p>17 record?</p> <p>18 MR. MONAGHAN: Well, Judge, just report that</p> <p>19 there has been a settlement with that Defendant.</p> <p>20 This will be followed with formal stipulation of</p> <p>21 dismissal.</p> <p>22 MR. TANNENBAUM: Right. We'll draft</p> <p>23 settlement papers, we'll execute them, and then</p> <p>24 right after that, your Honor, we'll submit a</p> <p>25 stipulation for dismissal.</p>	<p>Page 481</p> <p>1 - PROCEEDINGS -</p> <p>2 MR. MONAGHAN: Yeah, okay.</p> <p>3 MS. PHARES: Just say what you want and then</p> <p>4 we'll do it instead -- you want to stipulate to</p> <p>5 what?</p> <p>6 MR. MONAGHAN: I would like you to stipulate</p> <p>7 to the authenticity of the closing binder --</p> <p>8 closing binder purchase agreement dated as of</p> <p>9 April 8, 1998, as amended by and among C.J.</p> <p>10 Kettler, Thomas L. Griffin, Jules M. Bacal, Arthur</p> <p>11 Heller, Paul Kurnit and SONY Music Entertainment,</p> <p>12 Inc.</p> <p>13 MR. TANNENBAUM: Bate Stamp.</p> <p>14 MR. MONAGHAN: Bate Stamp JB0533 through</p> <p>15 JB1002.</p> <p>16 MS. PHARES: And Sunbow will stipulate to</p> <p>17 its authenticity, your Honor.</p> <p>18 THE COURT: And BMI?</p> <p>19 MS. SAFFER: No objection. I stipulate even</p> <p>20 though I don't know what it is.</p> <p>21 THE COURT: Just for the purposes of the</p> <p>22 record, let's mark it as 46.</p> <p>23 (Plaintiff's Exhibit No. 46, marked and</p> <p>24 received in evidence)</p> <p>25 THE COURT: Is there anything else we need</p>

<p style="text-align: right;">Page 484</p> <p>1 - PROCEEDINGS - 2 from counsel? 3 MR. TANNENBAUM: I hope not. I think we are 4 done. 5 THE COURT: Mr. Bacal, this has been a tough 6 case. I know you took umbrage, you were concerned 7 about some of the language in some of the 8 decisions. I write what I think. That means 9 nothing against you personally, I want you to 10 know, and I wish you the very best for the rest of 11 your obviously your good professional career and 12 the rest of your life. Health and happiness go 13 forward. 14 MR. BACAL: Thank you, sir. 15 MR. TANNENBAUM: Thank you, your Honor, it 16 has been a pleasure. 17 (Pause in the Proceedings) 18 THE COURT: All right, I want you to know we 19 have a lot more room at the counsel table now. 20 MS. SAFFER: I've gotten so used to sitting here, I'll just stay. 21 THE COURT: Okay, let's go forward. I did give you a couple more minutes this morning. 22 MR. MONAGHAN: You did. Thank you, your Honor, I appreciate that indulgence.</p>	<p style="text-align: right;">Page 486</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN 2 what I want you to tell the Court is what is this and 3 what -- how did it come about? What were the 4 circumstances? 5 A. I wrote -- I wrote two songs for the Walt 6 Disney Company. Wonderland is one of the publishers for a 7 children's record called Minnie and Me. 8 Q. Is that Minnie Mouse? 9 A. Yeah, Minnie Mouse. It was for girls seven 10 to nine, I think. And it sold quite a few copies. And I 11 wrote two songs. I want to be the conductor and I can 12 hardly wait until morning. And this is their song writer 13 agreement that they sent. And it gives me all writer 14 royalties. 15 Q. Okay. Who prepared the agreement? 16 A. Well, it was negotiated by Noel Silverman. 17 Q. Who is Noel Silverman? 18 A. He was my attorney at the time on -- 19 Q. In 1990? 20 A. -- yes. 21 Q. Okay. And do you know who it was who 22 drafted the language that eventually became Exhibit A 23 describing song writer royalties? Which side? 24 A. No, I really don't actually. I don't know 25 if it was the Disney people or Noel worked that out.</p>
<p style="text-align: right;">Page 485</p> <p>1 - PROCEEDINGS - 2 THE COURT: Okay, go ahead. 3 MR. MONAGHAN: Before I finish up with Miss 4 Bryant there is one other matter which is the 5 availability of Mr. Rigby. I know counsel will 6 have cross and I'm wondering -- and I don't know 7 how extensive the cross will be. We had discussed 8 his availability. Today is the last day he will 9 be available. 10 MS. PHARES: For this term. Today is the 11 last day, but the trial is going to continue. 12 MR. MONAGHAN: Okay, so you will make him available at some further date? 13 MS. PHARES: Yes. 14 MR. MONAGHAN: Okay, that's fine. 15 DIRECT EXAMINATION 16 BY MR. MONAGHAN: (Continued) 17 Q. I'll show you now previously marked Exhibit 18 No. 20, songwriter's agreement, that is the one that the 19 Court had taken in during the lunch break previously, and 20 it is an agreement, it is in evidence entered as of the 21 20th day of March 1990 by and between Wonderland Music 22 Co., Inc. and Anne Bryant, writer. Wonderland being 23 described as the publisher. But I didn't really get any 24 information about this agreement from you at the time, and</p>	<p style="text-align: right;">Page 487</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN 2 Q. Okay. Now, referencing Exhibit A, song writer royalties, could you please read briefly into the 3 record -- let's put some context on it. 4 A. I'll put some glasses on. 5 THE COURT: I thought we had this read in, 6 in Annex A attached? 7 MR. MONAGHAN: Oh, I read it in? You are right. 8 THE COURT: I just want you to know I pay attention. 9 THE WITNESS: Yes, you sure do. 10 MR. MONAGHAN: I guess I didn't pay close enough -- 11 THE COURT: All right. 12 MR. MONAGHAN: All right, I have no further questions on this part of the case. 13 THE COURT: All right, you can stay right there. 14 THE WITNESS: Oh, okay. 15 THE COURT: All right, we're going to first hear from Miss Saffer. 16 MS. SAFFER: Good morning, your Honor. 17 CROSS-EXAMINATION 18 BY MS. SAFFER:</p>

<p style="text-align: right;">Page 488</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 Q. Good morning, Miss Bryant. 3 A. Good morning, Miss Saffer. 4 Q. I want to start out before I ask any 5 questions explaining to you that I ask these questions 6 because we are a Defendant in this lawsuit, and my 7 objective here is to clarify things as much as possible, 8 vis-a-vis BMI's involvement in this lawsuit. I, 9 therefore, I don't have very many questions for you, and 10 they deal really specifically toward claims that were made 11 against BMI.</p> <p>12 Now, we heard a lot of testimony from you 13 that you had some difficulty getting a copy of your 14 catalog listing from BMI in the late 90s; however, you had 15 also testified that you did receive one in 1990, correct?</p> <p>16 A. Well, that was an approximate date. 17 Q. About? 18 A. Yeah. 19 Q. About? 20 A. Yeah. 21 Q. Yes. 22 And that what you were trying to do in 1998 23 was to verify whether there had been changes -- 24 A. Yes. 25 Q. -- since you had seen it previously?</p>	<p style="text-align: right;">Page 490</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 Q. Yes. 3 Now, isn't it true that at the time Miss 4 Bryant said to you -- I'm doing that again, I'm sorry -- 5 Miss Smith said to you that BMI had not changed your 6 records? 7 A. Yes, she said that. 8 Q. Isn't it true -- 9 A. She said -- no, she said they had not 10 changed my records except there was a date where there was 11 a general change. 12 Q. Correct, exactly. There was a date when 13 there was a general change. 14 On the Exhibit 2 that we looked at, there is 15 a column on the far right-hand side that has the heading 16 "entered", isn't that right? 17 A. I'm not sure what Exhibit 2 is. 18 Q. The catalog listing. 19 A. My catalog? 20 Q. Yes. 21 A. Yes. 22 Q. Yes. And isn't it true that Miss Smith 23 explained to you that BMI had made a number of changes to 24 their computer system and these dates reflected the 25 updating of the computer system?</p>
<p style="text-align: right;">Page 489</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 A. Yes. 3 Q. -- correct? 4 Fine. 5 There came a time in October of 2000 when 6 you met with a BMI executive named Allison Smith, isn't 7 that right? 8 A. Yes. Yes, I did. And you were present. 9 Q. Yes, I was. 10 And isn't it true that your lawyer was also 11 present? 12 A. Yes. Patrick Monaghan was present. 13 Q. We met in Miss Bryant's office for an 14 afternoon? 15 A. Smith's office. Didn't give me an office 16 there yet. 17 Q. I apologize. But you are welcome to use one 18 whenever you wish. 19 A. Thank you very much. 20 Q. I misspoke, I'm sorry. 21 We met in Miss Smith's office, correct? 22 A. Okay. 23 Q. And at that time we went through various 24 records and we looked at the catalog listing, correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 491</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 MR. MONAGHAN: Your Honor, I'm going to 3 start objecting here because this would be 4 hearsay. This is being offered for the truth of 5 the statements made by Miss Smith. 6 THE COURT: Well -- 7 MR. MONAGHAN: And it's also after the suit, 8 I think. 9 THE COURT: Well, it's cross-examination. I 10 give a lot of leeway, and it really is a question 11 of what does this witness know about. I'll let 12 her answer. 13 MS. SAFFER: Yes, Judge. 14 A. It is true that she explained that to me. I 15 don't know if it is true. It is true that she explained 16 it to me. No offense, of course -- 17 Q. None taken. 18 A. -- that is intended. 19 Q. None taken. 20 I want to move on to another item, if I can. 21 During the course of that meeting, isn't it 22 true that we explained -- Miss Smith primarily explained 23 to you how registrations were made and how BMI's databases 24 were kept? 25 A. Generally she did, yes, generally.</p>

<p style="text-align: right;">Page 492</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 Q. Generally. 3 Didn't she explain to you that there were 4 separate records kept for commercial jingles, for 5 background music cues and for feature songs, like popular 6 songs, if you will? 7 A. Like the JEM song? 8 Q. Correct. 9 A. Those are feature songs. 10 Q. Correct. 11 A. She did explain it, but I didn't understand 12 why the database or jingles we couldn't get that. She 13 said it was a separate database. Jingles and these others 14 were separate databases. But my catalog never had them in 15 it. That's what she explained to me. She said, well, it 16 is a separate database, okay. 17 Q. Didn't at that time she also explain to you 18 that the jingle database back in the late 70s and 80s had 19 been kept on one individual's personal computer and it 20 wasn't until the 90s that the records were combined? 21 A. No, she didn't -- she did not explain that 22 to me then. 23 MR. MONAGHAN: Your Honor, I would just like 24 a standing objection on this discussion which is 25 probably in the nature of some sort of a</p>	<p style="text-align: right;">Page 494</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 THE COURT: There was a couple of them. 3 Plaintiff's 4, 3 -- 4 MS. SAFFER: The one yesterday that was 5 signed by Ford Kinder that you identified his 6 signature. 7 THE WITNESS: Yes. 8 MS. SAFFER: Yes. Okay. Can somebody just 9 show it to me, please, for a moment? 10 MS. PHARES: 40. 11 THE COURT: 40. 12 MS. SAFFER: I'm just using this one for 13 illustrative purposes. I remember this one from 14 yesterday. 15 MR. MONAGHAN: 39. 16 MS. SAFFER: 39 is fine. I can use 39. 17 They are similar. 18 BY MS. SAFFER: 19 Q. I'd like to show this to you again, please, 20 which you identified yesterday. 21 Whose signature is at the bottom? 22 A. Ford Kinder's. 23 Q. Okay. And can I have -- it's the only copy. 24 Can we look at it together for a moment? Okay. 25 And it is listed as the authorized</p>
<p style="text-align: right;">Page 493</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 settlement issue with Plaintiff and BMI, and -- 3 THE COURT: Your position is that it was a 4 settlement conference? 5 MR. MONAGHAN: It was in the nature of an 6 attempt to find out what was going on between BMI. 7 THE COURT: I'll allow it. Go ahead. 8 MR. MONAGHAN: But I don't want to jump up 9 and down so I would just like a standing 10 objection. 11 THE COURT: Okay. 12 Q. You are aware, aren't you, that jingles are 13 registered in a different fashion with BMI than cues for 14 T.V. Shows and songs? 15 A. I'm aware that presently, in recent years, 16 that they are registered differently. But, for me, with 17 all these songs that are involved in this case, I didn't 18 register them. They were registered by an administrator, 19 so I don't know -- I didn't know what his process was even 20 until a couple of years ago when I tried to register 21 something myself, and I was rejected. 22 Q. We have in evidence -- and, forgive me, I 23 don't know the exhibit number -- but a clearance form. 24 MS. SAFFER: And maybe one of the other 25 lawyers can help me?</p>	<p style="text-align: right;">Page 495</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 signature, correct? 3 A. Yes. 4 Q. So it was Mr. Kinder, your partner, who was 5 registering, correct? 6 A. Yes. But this isn't a jingle. 7 Q. This particular one -- and I'll go back to 8 another one, if I have -- if there was one that was 9 presented, I honestly don't know -- indicates that it 10 should get sent to Starwild care of the Law Offices of 11 William Dobishinsky? 12 A. Right. 13 Q. But it was Mr. Kinder who did the 14 registration, correct? 15 A. He signed it. 16 Q. He signed it, right. Okay. 17 A. But it has a different number than a jingle 18 which was registered by someone else. 19 MS. SAFFER: Do we have a copy in evidence 20 of any jingle statements? 21 THE WITNESS: Yeah, we do. 22 MS. SAFFER: Excuse me -- jingle statement. 23 I mean, registration, excuse me. Jingle 24 registration. 25 MR. MONAGHAN: Well, because I'm not</p>

<p style="text-align: right;">Page 496</p> <p>CAROL ANNE BRYANT - CROSS/SAFFER familiar with the parlance --</p> <p>MS. SAFFER: The equivalent of Exhibit 39, but that is for a jingle. The witness has testified that somebody else registered the jingles, not Mr. Ford, so I'm asking if we have something that would demonstrate that.</p> <p>THE WITNESS: You know, the Robots in Disguise, GI Joe, Real American Hero.</p> <p>MS. SAFFER: Not a statement. A clearance form.</p> <p>THE COURT: 3 and 4.</p> <p>MS. PHARES: Look at 3.</p> <p>THE WITNESS: Can I get my glasses? I forgot my glasses.</p> <p>MR. MONAGHAN: Here are a couple of them, Judy.</p> <p>MS. SAFFER: I have a document that I would like now to introduce into evidence, because apparently up until now there has not been a clearance form for a jingle. I'd like to show this -- is that okay with you?</p> <p>MS. PHARES: I'm giving you a sticker.</p> <p>MS. SAFFER: You are giving me a sticker.</p> <p>THE COURT: All right, this is Defendant's</p>	<p style="text-align: right;">Page 498</p> <p>CAROL ANNE BRYANT - CROSS/SAFFER THE COURT: What is it?</p> <p>THE WITNESS: The BMI clearance form.</p> <p>MS. PHARES: And the number.</p> <p>THE WITNESS: 000738.</p> <p>MR. MONAGHAN: We have copies, actually.</p> <p>MS. SAFFER: Okay.</p> <p>THE COURT: Okay, now it has been identified.</p> <p>MS. SAFFER: Yes.</p> <p>THE COURT: Miss Bryant, you are the one that sent this into BMI?</p> <p>THE WITNESS: Yes. And they sent it back to me.</p> <p>THE COURT: All right, we have not gotten to that yet.</p> <p>THE WITNESS: They rejected it.</p> <p>THE COURT: Do you want to move it into evidence now?</p> <p>MS. SAFFER: Yes.</p> <p>THE COURT: Show it to the other attorney.</p> <p>MR. MONAGHAN: No objection.</p> <p>THE COURT: Miss Phares?</p> <p>MS. PHARES: No objection.</p> <p>THE COURT: All right, admitted into</p>
<p style="text-align: right;">Page 497</p> <p>CAROL ANNE BRYANT - CROSS/SAFFER Exhibit A.</p> <p>MS. SAFFER: Yes. Thank you very much.</p> <p>THE COURT: Hand it to the reporter.</p> <p>(Defendant's Exhibit A, a clearance jingle, marked for identification)</p> <p>Q. Once again, since this is the only copy, we'll share it, if it is okay with you?</p> <p>MR. MONAGHAN: May I step up and look at it too? I have not seen it.</p> <p>THE COURT: It has not been offered in yet.</p> <p>MS. SAFFER: I would ask her to identify it first.</p> <p>A. Yes, this is a clearance form that I sent in for my company for a jingle I did for Arm & Hammer Super Cat. And it was returned to me as --</p> <p>MS. PHARES: Objection, your Honor. We're just identifying the document.</p> <p>THE COURT: Yes.</p> <p>MS. PHARES: And for our convenience, we've just given you the only copy we have. Would you give us the production number that is at the bottom of it on the --</p> <p>THE WITNESS: 000738. Do you want me to identify it that way?</p>	<p style="text-align: right;">Page 499</p> <p>CAROL ANNE BRYANT - CROSS/SAFFER evidence. (Defendant's Exhibit A, marked and received in evidence)</p> <p>Q. Using this as just illustrative to show that clearance forms for jingles have different forms than clearance forms for cue sheets, isn't that correct?</p> <p>You looked at both now in the past five minutes. Not for the content of it, but the fact that they are registered separately, they provide different information, and that from time to time you have submitted clearance forms. I'm not going into the body of this particular one and whether there was any problem with it or anything. Just the general proposition.</p> <p>MR. MONAGHAN: Well, I'm not sure if it's a comparison. I don't know what the other side of the comparison is.</p> <p>MS. SAFFER: The exhibit --</p> <p>MR. MONAGHAN: This is a clearance form. She's identified it.</p> <p>THE WITNESS: That is correct.</p> <p>MS. SAFFER: The fact it is different from Exhibit 39 which is a clearance form for T.V. cues, I'm asking her to admit they are different forms and different procedures --</p>

<p style="text-align: right;">Page 500</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 THE COURT: Right. 3 MS. SAFFER: -- for T.V. and for jingles. 4 Q. Isn't that correct? 5 A. Yes, well, that one, the theme you accepted. 6 But the jingles you rejected. So I, you know -- 7 THE COURT: We're not talking about that. 8 THE WITNESS: Oh, okay. 9 THE COURT: It is a different form. 10 THE WITNESS: It looks like the same form to 11 me. I mean, it is a clearance form for a piece of 12 music. 13 THE COURT: Okay, but there's an A form and 14 a B form. 15 THE WITNESS: No, not that I've ever seen. 16 There are more forms attached to a jingle 17 registration. 18 MS. SAFFER: Well, the witness supplied 19 information that was going to be my next question. 20 BY MS. SAFFER: 21 Q. There are different procedures for 22 registering jingles than there are for T.V. cues, correct? 23 A. I learned that recently, yes. 24 Q. You've been in the business and received 25 millions of dollars from BMI since the 70s and you didn't </p>	<p style="text-align: right;">Page 502</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 THE COURT: If she knows it. If you know 3 it. 4 A. I've been told that they have different 5 databases. They told me that. 6 Q. Okay. We've had discussions during the 7 course of the trial about your former partner Ford Kinder, 8 correct? 9 A. Yes, yes. 10 Q. And, in fact, discussion has come up during 11 the course of the trial now that at one time back in the 12 late 70s early 80s Ford Kinder belonged to a different 13 Performing Rights Society, correct? 14 A. Yes. Right. Yes, he did. 15 Q. Mr. Kinder belonged to ASCAP, isn't that 16 true? 17 A. Yes, he did. 18 Q. Yes, he did. 19 Now, you were aware that Mr. Kinder received 20 money from ASCAP just like you received money from BMI, 21 correct? 22 A. Yes. 23 Q. Okay. 24 A. For a period of time. 25 Q. While he was a member.</p>
<p style="text-align: right;">Page 501</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 know there were different procedures? 3 MR. MONAGHAN: Argumentative, your Honor. 4 Objection. 5 THE COURT: It's a question. I'll allow it. 6 THE WITNESS: Can I answer it? 7 THE COURT: Yes. 8 A. I didn't register my own jingles. I tried 9 to do it there, but I didn't have an administrator. So I 10 tried to do it and I found out I was never allowed to do 11 it. Miss MacLaughlin sent me a data sheet. 12 Q. Have you ever received a data sheet in the 13 registering the T.V. cues? 14 A. I can't register T.V. cues. 15 Q. Miss Bryant, what I'm asking is not whether 16 you do it or somebody does it on your behalf. What I'm 17 asking you is you are aware that there are different 18 procedures for the handling of jingles, T.V. cues and 19 popular songs? 20 A. I've learned that, yes. 21 Q. Okay, therefore, you are aware that BMI 22 keeps different records for different kinds of uses of 23 music, correct? 24 MR. MONAGHAN: Object. How would she know 25 that? </p>	<p style="text-align: right;">Page 503</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 A. While he was a member, yes. 3 Q. Right. 4 Were you aware that the jingles that you 5 registered as the sole composer at BMI were registered by 6 Mr. Kinder at ASCAP as the sole composer? 7 A. No. This is news. 8 Q. Well, you combined your money, didn't you? 9 A. If either one of us got a check we shared 10 the gross, yeah. 11 Q. And you were getting ASCAP money as well as 12 BMI money, correct? 13 A. He shared his money with me. I made more 14 money. I shared my money with him. 15 Q. And you made more money. Okay. 16 Do you know the reason why Mr. Kinder left 17 ASCAP and came over to BMI? 18 MR. MONAGHAN: I have to object. 19 Q. If you know. 20 MR. MONAGHAN: Withdrawn. 21 A. No, I don't know. 22 Q. He never discussed it with you? 23 This was the primary source of your income 24 and his income and he never discussed with you the reasons 25 why he would belong to one and you would belong to </p>

<p style="text-align: right;">Page 504</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 another? 3 I mean, you never had any discussions over 4 any of this? 5 A. Ford joined ASCAP before I ever met him. I 6 joined BMI before I met him. I joined BMI. 7 Q. Did there come a time in the 1980s when you 8 were partners and you were sharing all of your income and 9 he decided, for some reason, to come over to BMI? And I'm 10 asking you whether you ever discussed with him the reasons 11 why he may decide to do that? 12 A. Well, you are going to like this. I thought 13 BMI was better and he was stuck in an ASCAP contract. 14 They revolve every two years, you know. You can't get out 15 of them. They just roll over unless you are at the right 16 moment, notify them you want to switch societies. 17 Q. Were you aware of the fact that when he came 18 over to ASCAP -- I mean, came over from ASCAP to BMI and 19 music was put down as cues rather than jingles, the two of 20 you who were anyway splitting your money registered these 21 things as 50/50 authorship? 22 MR. MONAGHAN: Can we have that question 23 read back? 24 MS. SAFFER: It is a little awkward, I 25 agree. Let me rephrase it.</p>	<p style="text-align: right;">Page 506</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 A. Smith. 3 MS. PHARES: Miss Smith. 4 MR. MONAGHAN: We'll stipulate that -- 5 MS. SAFFER: Miss Bryant means Miss Smith. 6 I do apologize. Please forgive me. 7 THE COURT: That's all right. 8 Q. -- that part of the discussions we had 9 involved whether or not a piece of music was registered as 10 an instrumental or an instrumental/vocal; do you remember 11 our talking about that subject? 12 A. Do you want to know what I remember about 13 it? 14 Q. Do you remember our talking about the 15 subject, just in general? 16 A. Vaguely saying that instrumentals were 17 different than jingles and feature songs. But if you want 18 to ask me what I remember of it, that's a different -- 19 Q. Do you recall Miss Smith explaining to you 20 that because BMI credits writers based upon logs that are 21 submitted BMI has no way of knowing whether the particular 22 performance was an instrumental or an instrumental with 23 vocals? We just get a report. We don't listen to it. 24 Do you remember her explaining that to you? 25 A. I remember her explaining that you get a</p>
<p style="text-align: right;">Page 505</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 THE WITNESS: That's nice, thank you. 3 Q. Were you aware that when Mr. Kinder came 4 over from ASCAP and music was used as cues in television 5 programs, music that the two of you worked on, he 6 registered the music as 50 percent Bryant and 50 percent 7 Kinder? 8 A. When he joined BMI? 9 Q. Yes. 10 A. I -- no, I wasn't aware, and I don't know 11 how -- I don't know how he could have done that. I'm 12 sorry. 13 Q. I'm showing you Exhibit 39, which was 14 submitted by Ford Kinder, which indicates Anne Bryant 15 50 percent and Ford Kinder 50 percent, correct? 16 And you were not aware of any of this? 17 A. 5/4/88. Wait a minute. These changed for 18 us at the end, you know, we broke up a couple of months 19 after this. So, you know, putting it 50/50 in our names, 20 at that point we were about to go out of business 21 together. It took us a year to break up. That's all I 22 can say. You know, I don't specifically remember it, but 23 that would be my explanation for it. 24 Q. Do you remember as part of the discussions 25 that we had with Miss Bryant --</p>	<p style="text-align: right;">Page 507</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 report and you don't listen to it, but I don't remember 3 you illustrating instrumental or instrumental with vocal 4 and setting that out. I do remember you saying you got a 5 report and you didn't listen to it. And that there was a 6 lot of music, you couldn't listen to it all. You were 7 working with a report. I remember that. 8 Q. Do you remember her explaining that when a 9 composition is registered and there are on the 10 registration a composer and an author written that we will 11 pay each 50/50 unless we are given instructions that the 12 split should be different? 13 A. Yes, I remember that. 14 Q. Do you know the industry practice on who 15 prepares cue sheets? Do you know the industry, the 16 general industry practice on who prepares cue sheets that 17 are submitted to BMI? 18 A. My experience is the producer certifies 19 them. I don't really know who exactly who submits them. 20 Q. And you are aware, are you not, that BMI 21 accepts these cue sheets from the producers and does not 22 in fact investigate and try to determine if everything on 23 that sheet is accurate, that we accept these cue sheets 24 from the producers and use them as part of our records? 25 MR. MONAGHAN: Your Honor, I object. It</p>

<p style="text-align: right;">Page 508</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 sounds like testimony to me. I don't know how she 3 would be aware.</p> <p>4 THE COURT: Let her say she's not aware of 5 it. Let's go ahead.</p> <p>6 A. Am I aware? Was that the question?</p> <p>7 Q. Yes. Do you know about that?</p> <p>8 A. I know about your practice.</p> <p>9 Q. Yes?</p> <p>10 A. Yeah.</p> <p>11 Q. Okay. Did you or Mr. Kinder ever notify 12 BMI, to the best of your knowledge, before this lawsuit 13 began, that you were supposed to be paid the royalties 14 attributable to Mr. Kinder's writer share?</p> <p>15 A. No. No, no.</p> <p>16 Q. Okay. Did you ever provide BMI with a copy 17 of an assignment from Mr. Kinder before this litigation 18 began?</p> <p>19 A. No.</p> <p>20 Q. Okay. I believe you testified, but I'd like 21 to clarify it, that you know that BMI pays royalties for 22 the public performance of music, correct?</p> <p>23 A. Yes.</p> <p>24 Q. You don't believe that BMI pays for sheet 25 music, correct?</p>	<p style="text-align: right;">Page 510</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 my cross. And I don't know if this is the proper 3 place or procedure, but I would like based upon 4 the testimony to move to have BMI dismissed. 5 Paragraph 16 and 17 of the complaint alleges that 6 BMI knowingly permitted Kinder and Bacal to 7 reregister her titles. There's been no testimony 8 to that effect.</p> <p>9 It further alleges that Plaintiff was to be 10 paid all of Kinder's royalties, and the witness 11 has admitted she never told us to do that.</p> <p>12 The complaint says that these actions on 13 behalf of BMI allegedly showed a pattern of fraud 14 and a breach of our fiduciary duty because we 15 allegedly caused re-registrations. And there has 16 been absolutely no testimony that there was ever 17 any re-registration.</p> <p>18 The complaint further deals with the sale of 19 DVDs and videos, et cetera, and the Plaintiff has 20 just admitted that BMI doesn't have anything to do 21 with the sale of DVDs or videos.</p> <p>22 THE COURT: All right, my suggestion is that 23 you discuss that with Plaintiff's counsel, and 24 that if the two of you don't agree to that 25 position now and what should happen in the future,</p>
<p style="text-align: right;">Page 509</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 A. I don't believe they do.</p> <p>3 Q. Right.</p> <p>4 A. No.</p> <p>5 Q. And we don't pay royalties for the sale of 6 records or videos?</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. Okay. We had a lot of testimony in the past 9 couple of days that certain music might have different 10 names depending upon how it's used. For example, I wrote 11 down in my notes Real American Hero was how you named the 12 jingle, and when it was on television show it was called 13 the GI Joe Theme. Am I right? Or did I write that down 14 wrong?</p> <p>15 A. You are right, except I didn't give it those 16 alternate names for registration. The administrator did, 17 okay? But I --</p> <p>18 Q. To the best of your knowledge, is there any 19 way BMI who admittedly doesn't listen to the music could 20 possibly know that Real American Hero is the same music as 21 the GI Joe Theme?</p> <p>22 A. Well, if you don't listen to the music, I 23 don't know how you could know that.</p> <p>24 Q. Good enough.</p> <p>25 MS. SAFFER: Your Honor, that's the end of</p>	<p style="text-align: right;">Page 511</p> <p>1 CAROL ANNE BRYANT - CROSS/SAFFER 2 that I would take that only at the end of the 3 Plaintiff's case.</p> <p>4 MS. SAFFER: Okay. Thank you very much, 5 your Honor.</p> <p>6 THE COURT: Miss Phares.</p> <p>7 THE WITNESS: I don't understand 8 something -- okay.</p> <p>9 CROSS-EXAMINATION</p> <p>10 BY MS. PHARES:</p> <p>11 Q. Miss Bryant, you have many times earlier 12 testified about the public -- that the performance 13 royalties should be thought of as having two parts; is 14 that right?</p> <p>15 A. Yes.</p> <p>16 Q. And that's 100 percent for the writers; is 17 that correct? And 100 percent for the publishers; is that 18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And, is it fair to say, that in the industry 21 these two parts when they are referred to just in the 22 lingo of the business are referred to as the writer's 23 share and the publisher's share, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Now, up until now, am I correct, that what</p>

<p style="text-align: right;">Page 512</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 we've been talking about and what you've been talking 3 about with respect to Mr. Bacal and Mr. Kinder is the 4 issue of how the writer's share of the public performance 5 royalties had been divided; is that correct? 6 A. Could you read that back? 7 COURT REPORTER: "Question: Now, up until 8 now, am I correct, that what we've been talking 9 about and what you've been talking about with 10 respect to Mr. Bacal and Mr. Kinder is the issue 11 of how the writer's share of the public 12 performance royalties had been divided; is that 13 correct?" 14 A. We have talked about that issue, but we've 15 talked about other issues about the writer's shares -- 16 Q. Well -- 17 A. -- as well. 18 Q. -- when you were working for Sunbow, that 19 is, when Kinder & Bryant were working for Sunbow, is it 20 your understanding that the publisher's share went to 21 Sunbow? 22 A. Publisher's share went to Sunbow's 23 publishing companies. 24 Q. By that you mean Starwild or Wildstar? 25 A. Yes.</p>	<p style="text-align: right;">Page 514</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. You were entitled to receive the publishing 3 royalties. We don't question that. We are not asking for 4 the publishing. Never did. 5 Q. Right. 6 A. As far as the writer's royalties, I just 7 said that Sunbow didn't directly receive the writer's 8 royalties that I know of. However, I am capable of 9 listening to an underscore and hearing my melody being 10 played constantly throughout a show. So I do dispute that 11 part being given to other people. 12 Q. I'm just talking for the moment about the 13 BMI monies that gets collected for public performances. 14 And all the money that BMI collects gets put into two 15 pots. Right? One pot went to the publishers. And you 16 are saying you have no problem with that. And the other 17 pot was divided among you, Kinder, lyricists, other people 18 who wrote songs, and music, right? 19 A. That's where I have the problem with the 20 "other people". 21 Q. Right. With the other people. 22 And you don't have a problem with Sunbow, 23 isn't that right, with respect to that? 24 A. I'm not sure that I don't have a problem 25 with Sunbow with respect to that.</p>
<p style="text-align: right;">Page 513</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Q. And you don't have a dispute with the 3 propriety of that money being paid to the publishers, 4 isn't that correct? 5 A. Yeah, that's correct. We gave them the 6 publishing. 7 Q. All right. Now, if you turn to the writer's 8 share -- turn to the writer's share of this. You are not 9 saying, are you, that BMI paid any part of the writer's 10 share to Sunbow, are you, or to its publishing companies? 11 A. No. 12 Q. Okay, so you are okay with this. And 13 nothing was paid to Sunbow? 14 A. Nothing that I know of. 15 MR. MONAGHAN: I just want to make sure we 16 are talking about public performance royalties. 17 MS. PHARES: Public performance royalties is 18 all that is at issue here. 19 MR. MONAGHAN: Well -- 20 MS. PHARES: At the moment. 21 Q. So with respect to public performance 22 royalties, it's true that you don't have any complaint 23 against Sunbow for its conduct. We didn't receive your 24 monies. And the monies we did receive, you've testified, 25 we were entitled to receive, isn't that correct?</p>	<p style="text-align: right;">Page 515</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Q. All right, what I want to know is did -- are 3 you testifying that Sunbow received any of those monies? 4 A. I don't know that they did. 5 Q. It's just a yes or no. 6 Do you know or not? Or are you testifying 7 that they did or not -- rather, is it your claim that 8 Sunbow received part of the writer's share of the 9 royalties? 10 A. No, it's not my testimony that they received 11 it. 12 Q. And you don't have a tort claim in your 13 complaint against Sunbow? 14 A. You have to tell me what tort claim is. 15 MS. PHARES: Well, I'm going to ask your 16 counsel if he will concede that there is no tort 17 claim. 18 MR. MONAGHAN: There's a claim for unjust 19 enrichment and constructive trust. 20 THE WITNESS: Is that a tort claim, Patrick? 21 MS. PHARES: Is that an answer? 22 MR. MONAGHAN: There is no fight what is in 23 the pleadings and the Judge has already indicated. 24 THE COURT: It is not a tort. 25 MS. PHARES: Okay.</p>

<p style="text-align: right;">Page 516</p> <p>CAROL ANNE BRYANT - CROSS/PHARES</p> <p>THE WITNESS: Is not a tort claim?</p> <p>Q. Now I have another question.</p> <p>You are not claiming to be a joint owner with Sunbow of the copyright in the whole T.V. Series, are you?</p> <p>A. I never claimed copyright.</p> <p>Q. Just a yes or a no.</p> <p>A. No.</p> <p>Q. And you are not claiming that you own the copyright in any of the songs that you wrote for Sunbow for the HASBRO series, are you?</p> <p>A. No.</p> <p>Q. You've never registered a copyright in any of the songs in the copyright office, have you?</p> <p>A. No.</p> <p>Q. And in the notices on the T.V. Series or on the videocassettes of the T.V. Series, you are not included in the copyright notice as a copyright owner, are you?</p> <p>A. No, I'm not.</p> <p>Q. And you've never objected about your name not being included in the copyright notice, right?</p> <p>A. No, I have not.</p> <p>Q. And that's because you are not a copyright owner?</p>	<p style="text-align: right;">Page 518</p> <p>CAROL ANNE BRYANT - CROSS/PHARES</p> <p>MR. MONAGHAN: We have to have a definition by counsel of what that means to this witness in this question.</p> <p>THE COURT: Well, let's ask the witness if she knows what the term of art apparently within the music business of to work-for-hire means.</p> <p>Do you know what it means?</p> <p>THE WITNESS: I know what it means in the way that everyone I know who works in the --</p> <p>THE COURT: Tell us.</p> <p>THE WITNESS: -- in the jingle business.</p> <p>Primarily, the jingle business we are talking about.</p> <p>MS. PHARES: No, actually, primarily we're talking about the T.V. production business.</p> <p>THE WITNESS: Well, my initial relationship with Griffin-Bacal then took me into Sunbow. We've always said of our writer rights, of our copyright, no dispute, we do not want the copyright. Everyone I've ever worked for wants the copyright. We don't dispute that they need that. The publishing we try to get, but we very seldom do, so we give them the publishing. We reserve our writer rights. All of our writer</p>
<p style="text-align: right;">Page 517</p> <p>CAROL ANNE BRYANT - CROSS/PHARES</p> <p>owner?</p> <p>A. Yes. And because no one ever asked me anyway. But I didn't mind.</p> <p>Q. So when you occasionally refer to the music in the T.V. Series as "my music", either here or in affidavits that you've submitted, you don't mean that you own the copyright in the music, isn't that right? You just mean that you wrote it?</p> <p>A. Yes.</p> <p>Q. Well, actually, that's not fair. I've asked you two questions.</p> <p>You don't mean --</p> <p>A. Yes, there were two questions, right.</p> <p>Q. You don't mean that you wrote the copyright?</p> <p>A. That's true, I don't --</p> <p>Q. You do mean that you wrote the music?</p> <p>A. I do mean that I wrote the music.</p> <p>Q. And isn't the reason that you don't own the copyrights and the compositions that you wrote for the -- at least for the Sunbow T.V. Series is that when Kinder & Bryant wrote the music for Sunbow you worked-for-hire, isn't that right?</p> <p>A. We were hired to write.</p> <p>Q. Didn't you work on a work-for-hire basis?</p>	<p style="text-align: right;">Page 519</p> <p>CAROL ANNE BRYANT - CROSS/PHARES</p> <p>royalties come to us. And that's the way it works in the jingle business, and that was my frame of reference with Griffin-Bacal carried over into Sunbow.</p> <p>THE COURT: But tell us -- tell us what it means to you to say you worked-for-hire in the music business.</p> <p>THE WITNESS: I give away my copyright.</p> <p>Q. Right. And you give away your copyright?</p> <p>A. Reserving my writer's rights.</p> <p>Q. That's what I want to talk about. I want to talk about what you reserved. We agree that you reserved public performance royalties. Now, you talk about your publishing and sometimes your writer's rights. I want to be a little more specific about that, if you don't mind.</p> <p>We've said that the writer share is certainly this 100 percent part of the public performance royalties, correct?</p> <p>A. Yes.</p> <p>Q. Okay. Now, are there other royalties that you think you were entitled to?</p> <p>A. Yes.</p> <p>Q. And what were they?</p> <p>A. The writer's share of the music publishing</p>

<p style="text-align: right;">Page 520</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 income. 3 Q. All right, music publishing. 4 For the sake of clarity, anyway, I want to 5 talk about this as music publishing. It might even be 6 easier if we -- if we called this -- since this other one 7 has this confusing term of the writer's share and the 8 publisher's share, we sometimes here also reference to 9 publishing, publishers, and I think there's been a little 10 bit of a collapse about the rights we're talking about. 11 So just for the purposes of this, we'll call 12 this music publishing or even other rights, just to make 13 it different. 14 Now, what is included in other rights, in 15 your mind? 16 A. I've seen other rights attributed to things 17 like moral rights, things that I -- you know -- 18 Q. Well -- 19 A. -- I wouldn't call publishing. 20 Q. Go back to your testimony. 21 You said that you reserved -- you reserved 22 the writer's share and other publishing rights was what 23 you just said. And -- I mean, did you understand -- 24 A. Is that what I said? 25 Q. -- other publishing rights to mean --</p>	<p style="text-align: right;">Page 522</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 mechanical royalties. It would include sheet music sales 3 and folios. I mean, those -- 4 Q. Well, we call synch music and royalties is 5 called print? 6 A. It is called sheet music. Old fashioned 7 term. 8 Q. But sheet music and folios, you might have 9 orchestrations, right? 10 A. Right. Right. 11 Q. All right. I am just calling them print 12 because they are all on paper. But sheet folio 13 orchestrations, and you said mechanical -- 14 A. You should start off on the left. It's a 15 long word. 16 Q. Yes, I should. But what I should have is a 17 better sense of space. 18 And the mechanical rights, what do you 19 understand that to be? 20 A. That's for -- as opposed to something that 21 is broadcast over the air. 22 Q. Which is a public performance? 23 A. Public performance. 24 A mechanical is something that is brought 25 mechanically. It's vinyl.</p>
<p style="text-align: right;">Page 521</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. Other music publishing didn't I call it? 3 Q. Or other music publishing. That is all 4 right with me too. 5 What did you mean by it? 6 A. Music publishing. 7 Q. Uh-huh. 8 A. Do you want me to tell you all -- it's in my 9 Wonderland agreement. You want me to tell you what it 10 means? 11 Q. I want you to tell me what you understood -- 12 when you were telling the Court, what you understood what 13 you reserved when you made a work-for-hire agreement. 14 A. The writer's royalties. 15 Q. The writer's royalties, meaning the writer's 16 share of the public performance royalties? This? 17 A. That too. 18 Q. That. 19 And then what else did you reserve? 20 A. All -- half of the other music publishing 21 income goes to the publisher and half of it goes to the 22 writer and that would include synch fees and licensing 23 fees for the music. 24 Q. Licensing for what? 25 A. Licensing the songs. It would include</p>	<p style="text-align: right;">Page 523</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Q. Like making a phonograph record? 3 A. Or a disc. 4 Q. Or a disc? 5 A. Or a tape. 6 Q. Like an audiotape of your song, you mean, 7 right? 8 A. Yes. That would be a mechanical. 9 Q. So your understanding is that you received 10 rights when you were working for hire that included both 11 the public performance royalties for those rights, that 12 is, the writer's share, and you said you were entitled to 13 have these other rights? 14 MR. MONAGHAN: Object to the form of the 15 question. That wasn't the testimony. She didn't 16 say received, which would connote that it was 17 given back to her. Her testimony was that she 18 reserved them. 19 THE COURT: All right, as to form I'll 20 sustain the objection. 21 Q. But it's your understanding, is it not, that 22 when you work-for-hire, you never own the copyright; is 23 that correct? 24 MR. MONAGHAN: I'm going to object to the 25 line now. We didn't say this was a copyright</p>

<p style="text-align: right;">Page 524</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 case.</p> <p>3 THE COURT: It's cross-examination. The 4 witness can answer it. As a matter of fact, I 5 think she already did answer it.</p> <p>6 THE WITNESS: Not really. She's causing me 7 to think that there have been times when I've been 8 paid to write something that I've been able -- 9 that I've been given the copyright. And a strange 10 situation is the National Council of Churches.</p> <p>11 Q. I'm only talking about in this case. 12 A. I own the copyright and I get 200 percent 13 and they can't own the copyright, but they pay me to do 14 this and I own it still. So that has happened. I can't 15 say never.</p> <p>16 Q. I'm not asking -- 17 A. Commonly --</p> <p>18 Q. I said when you work-for-hire, and you said 19 that you have -- in fact, you have testified that for 30 20 years you've worked-for-hire. It's not your understanding 21 that you own the copyright in the materials, isn't that 22 correct?</p> <p>23 A. Yes. I think that -- I've been hired for 24 work, you know, and I understand that when I do I give 25 up -- I am -- I give up the copyright and willingly.</p>	<p style="text-align: right;">Page 526</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 People used to smoke. And I've tried cases in 3 court where there were spittoons. But, of course, 4 we had stone tablets then and only ten laws.</p> <p>5 Let's go.</p> <p>6 CROSS-EXAMINATION</p> <p>7 BY MS. PHARES: (Continued)</p> <p>8 Q. Your Honor, I just want to read in a passage 9 from Miss Bryant's deposition which was taken on March 31, 10 2003 in which she was asked:</p> <p>11 "Miss Bryant, are you familiar with the term 12 'work-for-hire'?</p> <p>13 "Answer: Yes.</p> <p>14 "Question: And what do you understand that 15 term to mean?</p> <p>16 "Answer: It always applied in my career I'm 17 not the copywriter on it. The work I've done has 18 been made work-for-hire on behalf of the publisher 19 client whoever they assigned it to. I give up the 20 copyright in exchange for a fee"--</p> <p>21 MR. PRIMIANO: Excuse me, can we have page 22 and line numbers? I'm sorry.</p> <p>23 MS. PHARES: Page 42 beginning at Line 18. 24 Shall I begin again?</p> <p>25 THE COURT: No, I've got it up.</p>
<p style="text-align: right;">Page 525</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 THE COURT: Okay, we're going to take a 3 ten-minute break and then we'll go through to 4 12:30.</p> <p>5 THE WITNESS: Okay. (Recess: 11:40 a.m.) (Reconvened: 11:55 a.m.)</p> <p>8 C A R O L A N N E B R Y A N T , 9 the Plaintiff, previously duly sworn 10 by the Court, resumed the stand 11 and testified further as follows:</p> <p>12 MR. MONAGHAN: Your Honor, a question has 13 been asked by someone at the defense table. Would 14 your Honor object if jackets were removed?</p> <p>15 THE COURT: It is warm out there?</p> <p>16 MR. RIGBY: I was asking the question out of 17 curiosity.</p> <p>18 THE COURT: Well, the answer is no. If I 19 have to wear this robe.</p> <p>20 MR. MONAGHAN: Fair enough.</p> <p>21 THE COURT: Though, of course, that wasn't 22 always the rule.</p> <p>23 MS. PHARES: Perhaps we could negotiate 24 comfort for everyone, your Honor.</p> <p>25 THE COURT: That wasn't always the rule.</p>	<p style="text-align: right;">Page 527</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 MS. PHARES: I'm going to start with that 3 answer.</p> <p>4 "It always applied in my career I'm not the 5 copywriter on it. The work I've done has been 6 made for hire on behalf of the publisher client 7 whoever they assigned it to. I give up the 8 copyright in exchange for a fee while also 9 retaining my performance rights royalties and any 10 other outside royalties. That's the way 11 work-for-hire works in the jingle business. It 12 has worked for me for 30 years."</p> <p>13 And I take it you are saying that -- is it 14 your understanding, rather, that work-for-hire works the 15 same way when you are writing for Sunbow --</p> <p>16 MR. MONAGHAN: I would ask that Miss Phares 17 read the rest of that testimony so we have a 18 contiguous -- there is another question and 19 answer.</p> <p>20 THE COURT: Well, if Miss Phares wants to do 21 that, she may.</p> <p>22 MS. PHARES: That actually wasn't what I was 23 intending to do, but Mr. Monaghan can certainly do 24 it when he is doing his rebuttal.</p> <p>25 Q. Now, that was in March of last year that you</p>

<p style="text-align: right;">Page 528</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 testified to that; is that correct? 3 A. Is that when it was? Was my deposition -- I 4 think -- 5 Q. That is when it was, okay? 6 A. -- Mr. Monaghan -- yes, that's -- 7 Q. So March -- 8 A. Yes. 9 Q. -- 2003. 10 And I'm going to just put work made for 11 hire. And just have a definition up here. You know 12 lawyers love definitions. 13 A. Yeah, I noticed that. 14 Q. And is it your understanding that when you 15 worked for Sunbow that your work-for-hire understanding 16 was the same as it was when you testified in March? 17 A. Yes. 18 Q. Okay. But, isn't it true that as recently 19 as this last April you claimed that you had been the 20 copyright owner of the music you wrote for Sunbow's T.V. 21 Series? 22 A. Copyright owner -- I claimed that? I never 23 claimed to own the copyright. I never asked for the 24 copyright. 25 Q. Do you remember doing an affidavit in</p>	<p style="text-align: right;">Page 530</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 that you and Ford Kinder owned the copyrights but 3 entrusted them to Bacal? 4 A. We began from the moment we wrote the piece 5 of music -- we began as the creators from the moment we 6 created a piece of music by owning everything which would 7 be then entrusted to Sunbow on behalf of their client. I 8 don't know how they worked that out. But I know that we 9 gave it up. It is not our copyright. 10 Q. But that you owned it in the beginning you 11 are saying you entrusted it to them? 12 A. For a hot minute. I'm not saying I retained 13 it. I gave it back -- I gave it away to them. 14 Q. You owned the copyright and entrusted it to 15 Sunbow, is that right? Sunbow? 16 A. That's what you just read me that you told 17 me I said. I have a problem with the word "entrusted." 18 Q. This morning I get to ask the questions. 19 A. Oh. Yeah, I bet you always get to ask the 20 questions. 21 Q. And didn't you recently point out that the 22 Copyright Act requires a writing to transfer the copyright 23 also in April of this year? 24 MR. MONAGHAN: There's an objection. She's 25 not a lawyer.</p>
<p style="text-align: right;">Page 529</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 opposition to the motions for summary judgment and 3 dismissal submitted by the Defendants Jules M. Bacal and 4 Sunbow Productions, Inc. in April of this year? 5 A. A couple of months ago, yes, I remember 6 that. 7 Q. And in that affidavit didn't you say that 8 "upon creation the writer owns all of the rights in the 9 composition. What's actually true in this case is that 10 Ford Kinder and I entrusted the copyright to Bacal and his 11 companies Griffin-Bacal and Sunbow Starwild on behalf of 12 their client HASBRO?" 13 A. Yes. 14 Q. Well, in this statement aren't you claiming 15 that Kinder and Bryant didn't work-for-hire? 16 Weren't you saying that you and Kinder owned 17 the copyrights and entrusted them to Bacal -- 18 MR. MONAGHAN: Object. 19 Q. -- and to Sunbow? 20 MR. MONAGHAN: She's making this a copyright 21 case. 22 THE COURT: No. This is cross-examination. 23 Go forward. 24 A. Can I go forward? I mean, can I answer you? 25 Q. I'm just asking you, weren't you claiming</p>	<p style="text-align: right;">Page 531</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. As a matter of fact, you wrote to me -- 3 wrote after -- it said the Plaintiff is not a lawyer, she 4 doesn't know what she is talking about. So you yourself 5 wrote that. 6 THE COURT: Well, Miss Bryant, just to sort 7 of -- hold on. Just to cut through this, are you 8 claiming you ever had a copyright in the music 9 that's before this Court? 10 THE WITNESS: I automatically when I create 11 something have a copyright unless I give it to 12 someone else. 13 THE COURT: Okay. Was there any -- was 14 there ever a case here where you say you didn't 15 give that copyright to Sunbow? 16 THE WITNESS: No. No problem. They need 17 it. 18 BY MS. PHARES: 19 Q. I would like to read to you your statement 20 from Page 12 of another one of your affidavits from April. 21 This is the affidavit in response to the affidavits of 22 Thomas Griffin and Jules M. Bacal. 23 A. This is the same group, same time period? 24 Q. The same time period. 25 A. Okay.</p>

<p style="text-align: right;">Page 532</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Q. In April this one particularly, this 3 affidavit was also signed on this was the day before 4 April 29th.</p> <p>5 You said: "The Copyright Act and the very 6 agreement that Sunbow is throwing before the Court at this 7 late date reveal that a relinquishment of the copyright 8 requires a written agreement and no such written agreement 9 has been produced by the Defendants."</p> <p>10 Correct?</p> <p>11 A. Yes.</p> <p>12 Q. And then you went on to say: "Rather than 13 march down to the U.S. Federal Court in Foley Square, I 14 will simply state that the issue of the copyright was that 15 I gave G.B.I. and/or Sunbow the musical properties that I 16 created but reserved and never transferred my writer's 17 royalties."</p> <p>18 A. That's correct.</p> <p>19 Q. But you didn't do that in writing; is that 20 correct?</p> <p>21 A. I never executed anything where I gave away 22 my writer's rights.</p> <p>23 Q. So --</p> <p>24 A. My writer's royalties share rights.</p> <p>25 Q. I'm just reading -- I'm going to go back</p>	<p style="text-align: right;">Page 534</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. My royal -- my copyright. 3 Q. I'm only talking about your relationship 4 with Sunbow.</p> <p>5 Did you sign any agreement with Sunbow in 6 which you gave away the copyright?</p> <p>7 A. I don't remember signing Sunbow agreements. 8 Q. So you could have done it, you just don't 9 remember; is that right?</p> <p>10 A. I don't remember signing. That's my answer. 11 Q. I'm asking you another question. 12 A. Okay.</p> <p>13 Q. Could you have done it, but you just don't 14 remember? We're talking about events that took place 15 almost 20 years ago.</p> <p>16 A. I would remember. I would not have signed 17 away my writer's rights. I know that. And I wouldn't 18 have forgotten that. I just never did it in my career. 19 Q. Miss Bryant, I'm not talking about any of 20 the rights that are on these first two pages, all right. 21 I'm not talking about did you sign away either your public 22 performance royalties or did you give away your music 23 publishing. These other rights. I'm asking a different 24 question.</p> <p>25 I'm asking you: Did you sign a writing in</p>
<p style="text-align: right;">Page 533</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 over what you just said you wrote was: "The Copyright Act 3 and the very agreements that Sunbow was throwing before 4 the Court at this late date reveal that a relinquishment 5 of the copyright requires a written agreement."</p> <p>6 Is that right?</p> <p>7 A. That's what I said.</p> <p>8 Q. That's what you said.</p> <p>9 You've also just said that you didn't sign 10 anything, isn't that correct?</p> <p>11 MR. MONAGHAN: No, she didn't. I object to 12 the form.</p> <p>13 A. I didn't say that.</p> <p>14 THE COURT: Overruled.</p> <p>15 A. I said I never signed anything that gave 16 away my writer's rights. That's how I make a living.</p> <p>17 Q. Did you sign anything that gave away the 18 copyrights?</p> <p>19 A. I don't remember. But I didn't give away my 20 writer's rights. I've never done that in my career.</p> <p>21 Q. I'm asking you, you don't remember whether 22 or not you signed anything that gave away your writer's 23 rights?</p> <p>24 A. In my career I've signed something.</p> <p>25 Q. I'm only talking --</p>	<p style="text-align: right;">Page 535</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 which you conceded that the copyright in your works was 3 not yours, that it belonged to Sunbow?</p> <p>4 A. I never -- I -- I never signed that. I -- I 5 never gave away my writer's rights. That's all I can say. 6 I would remember signing contracts about that.</p> <p>7 Q. I didn't ask you about your writer's rights. 8 I'm asking you a different question.</p> <p>9 I'm asking you about the copyright in the 10 entire work, the songs you wrote. Did you sign a writing 11 that transferred those rights to Sunbow?</p> <p>12 MR. MONAGHAN: Asked and answered. She said 13 I don't remember.</p> <p>14 THE COURT: No, I'm going to allow it.</p> <p>15 A. We worked with these people for so many 16 years. I don't think we signed agreements on everything. 17 I told you it started with the same deal as Michelin & 18 Company. We gave up our copyright. That was the way we 19 worked in everything we did with them. I don't remember 20 signing Sunbow agreements really. We were working with 21 the same two people along with the same two companies. 22 Q. I understand. You described yesterday how 23 you think the negotiation took place. What I'm asking you 24 is a different question.</p> <p>25 I'm asking you: Did you sign any agreement</p>

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1	CAROL ANNE BRYANT - CROSS/PHARES	1	CAROL ANNE BRYANT - CROSS/PHARES
2	in which you surrendered your copyright or agreed that the	2	"In November Plaintiffs asserted in a brief
3	copyright was belong -- was owned by Sunbow?	3	in opposition that quote Ms. Bryant's claim to the
4	A. I don't remember signing that.	4	mechanical royalties and synch license fees
5	Q. But you could have signed such a thing, you	5	generated by her compositions is firmly rooted in
6	just don't remember?	6	United States Copyright Law" close quote.
7	A. I remember an agreement you showed us that	7	And then the footnote is:
8	we tried to negotiate for a long period of time, but I	8	"Plaintiffs have since retracted this
9	don't remember any other agreements on those other songs.	9	assertion in the hearing before me. Counsel for
10	I don't personally remember. I can't speak for Ford.	10	Plaintiffs explained quote 'I am telling the Court
11	Q. All right. And do you remember -- do you	11	there is no -- despite what we said in our brief,
12	remember also testifying in November of last year in an	12	our brief was a little over the top on the issue,
13	affidavit that you were -- that as the owner of the	13	and I'll be candid with you, we're not demanding
14	musical compositions used in videos and DVDs you were	14	any relief under the Copyright Act," close quote.
15	entitled to the mechanical royalties and/or other synch	15	And that was citing from the transcript at
16	licences attributable to the other licenses? And we're	16	Pages 29 to 30.
17	talking about --	17	BY MS. PHARES:
18	A. Can I read that?	18	Q. So in January you were saying you weren't
19	Q. Certainly. This is from Page 20, Paragraph	19	the owner of the copyright, correct?
20	81 of your affidavit in opposition to the motions for	20	A. I never said I owned the copyright.
21	summary judgment submitted by the Defendants, Jules M.	21	Q. Well, I just read you from your deposition
22	Bacal and Sunbow Productions, Inc., and in support of	22	in November at the time of that motion in which you said
23	Plaintiff's cross-motion for partial summary judgment at	23	you were an owner.
24	Page 20, Paragraph 81.	24	MR. MONAGHAN: No, she said she was an owner
25	(Pause in the Proceedings)	25	of the musical compositions. That's a
Page 537		Page 539	
1	CAROL ANNE BRYANT - CROSS/PHARES	1	CAROL ANNE BRYANT - CROSS/PHARES
2	Q. That's your testimony, isn't it?	2	mischaracterization.
3	A. I need a minute.	3	A. Yeah, that was bad. I shouldn't have said
4	Q. I beg your pardon?	4	that owner of the writer's share of the musical
5	A. I need a minute.	5	composition. I don't --
6	(Pause in the Proceedings)	6	Q. I will rely on what your affidavit said.
7	A. Well, this is my affidavit. It's the owner.	7	But my problem is, Miss Bryant, is which of
8	Q. You signed that affidavit under oath; is	8	the statements all sworn that you have given are we
9	that correct?	9	supposed to believe? Did you work-for-hire meaning that
10	A. Yes.	10	Sunbow owned copyright --
11	Q. So that is your testimony?	11	MR. MONAGHAN: I object to the form.
12	A. That's what I wrote.	12	Q. Or I'll ask you --
13	Q. In November, 2003?	13	MR. MONAGHAN: Excuse me, your Honor, if I
14	A. Yes.	14	may. There is no testimony -- and Miss Phares
15	Q. And --	15	isn't testifying, she's asking questions. Where
16	MS. PHARES: If I may have one minute, your	16	she says work-for-hire means Sunbow owns the
17	Honor.	17	copyright. That's not -- that's not a proper way
18	THE COURT: Yes.	18	to frame that question. She's not a lawyer.
19	(Pause in the Proceedings)	19	She's a lay person. She testified what her
20	MS. PHARES: Your Honor, I would like to	20	understanding of work-for-hire was.
21	read from a footnote in Judge Owen's decision in	21	THE COURT: Well --
22	the Federal Court on the remand in which he quotes	22	MS. PHARES: I'll reframe the question.
23	Mr. Monaghan's representation at the oral	23	THE COURT: Well, during this witness's
24	argument. And the footnote says -- hang on. It's	24	direct testimony she stated that she didn't have
25	dropped from the statement and text which said:	25	any copyright rights in the things that she wrote.

<p style="text-align: right;">Page 540</p> <p>CAROL ANNE BRYANT - CROSS/PHARES At least, that's what my notes say. MR. MONAGHAN: That's correct. THE WITNESS: That's right. THE COURT: So I don't know what the discussion is here. Q. And you said you had worked-for-hire all your life, all your career? A. Been hired for work. That's the first thing that means to me. Q. No, I had read you from your -- A. Okay, you want me to reread something I said, but I'm telling you what that means to me when I say it that -- and I thought I had explained that here, but -- THE COURT: Well, I take it, Miss Bryant, that when you say you worked-for-hire that this was a deal under which you would not get copyrights. THE WITNESS: That's what it means. THE COURT: All right. THE WITNESS: That's what we get the fee for. Q. All right, but -- but isn't it true that your testimony has been inconsistent on this subject in the last year?</p>	<p style="text-align: right;">Page 542</p> <p>CAROL ANNE BRYANT - CROSS/PHARES That's what I think is the problem. THE WITNESS: That choice of words. THE COURT: Perhaps. But I don't see that is a problem here. Miss Bryant, as far as I can see, testified under direct and whatever she may have perhaps inadvertently said in an affidavit is not saying now that she is the owner of any copyright. MS. PHARES: Well, that's correct, your Honor. Q. But is it not also true, Miss Bryant, that in October of 2003 Sunbow produced to you an unsigned copy of the JEM Agreement? A. I don't know when it was. But I did see that agreement. MS. PHARES: Well, I'll represent for the record -- and I don't think Mr. Monaghan is going to object -- that it was produced after Defendants filed their motion for summary judgment on September 30th and before the Plaintiff filed opposition on November 30th. MR. MONAGHAN: I don't think that's, you know, incorrect. Q. And are we also agreed that neither you nor</p>
<p style="text-align: right;">Page 541</p> <p>CAROL ANNE BRYANT - CROSS/PHARES MR. MONAGHAN: Object to that. Let the Court decide whether it is or it isn't. THE COURT: I'll allow it. MS. PHARES: She can answer this question. A. I don't know. I would have to look at it all again. I mean -- Q. Well, we've put up the statements as you've said them. You can see the -- the board, can't you? A. Yes. The first thing that you read to me I explained that you gave -- we gave the copyright, we gave the publishing away. Always retained writer's royalties. I don't know what date that was. Q. And then in November you said you were the owner of the copyright; is that correct? MR. PRIMIANO: Your Honor, I have to object. The deposition -- I mean, the affidavit that Miss Phares read in, Miss Bryant testified as the owner of the musical compositions used in these videos. THE COURT: She entrusted the copy. MS. PHARES: No, that's another one, your Honor. THE COURT: When you say you entrusted the copyright, it takes on at least an aura that you owned it and you allowed somebody else to use it.</p>	<p style="text-align: right;">Page 543</p> <p>CAROL ANNE BRYANT - CROSS/PHARES Mr. Kinder has any rights to exercise the copyrights in the music that you wrote for Sunbow? A. Only the ones we reserved. We always reserved, which we were the writers, we got the royalties for writing music. Q. Do you contend that you could authorize somebody to make a public performance of your work? A. How could I do that? I don't -- I don't think I can do that. Q. I just want to know whether you think you can. A. Are you talking about a work I did for someone else? That I gave them a copyright? They have the right to copy. They have the right to do that. I don't. Q. You don't have any rights. And you don't have a right to authorize the making of a phonograph record from say the recording of Truly Outrageous? MR. MONAGHAN: Objection to the first part of that question, you don't have any rights. THE COURT: Overruled. A. To authorize? Is that what you are asking me? Q. That's right.</p>

<p style="text-align: right;">Page 544</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. Do I have the authority? 3 Q. If someone calls you up and says: Miss 4 Bryant, I want to make a phonograph record of the musical 5 composition you wrote entitled Truly Outrageous, do you 6 have the authority to authorize that? 7 A. I tell them to call the publisher. 8 Q. And that's because the publisher has the 9 authority and you don't? 10 A. As far as I know I don't have the authority. 11 They, the publisher, does those kind of negotiations and 12 they have the copyright somehow entrusted to them. 13 Q. And it's also your understanding that Mr. 14 Kinder couldn't make that authorization either? 15 A. No, he couldn't make that authorization. 16 Q. So how exactly did Kinder & Bryant convey 17 their copyright rights to Sunbow? 18 A. Well, they always had the copyright rights. 19 We've been working with them for years. 20 Q. I know that. But, remember you -- I read to 21 you your testimony in which you said that can only be done 22 in a writing? 23 MR. MONAGHAN: No, actually -- I object. It 24 is a mischaracterization. If the whole portion 25 were read it said that she said in her affidavit</p>	<p style="text-align: right;">Page 546</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 copyrights -- 3 MR. MONAGHAN: Right. 4 THE COURT: -- to the publisher. 5 MR. MONAGHAN: That's correct. Not in 6 dispute. 7 THE COURT: All right. Let's go on. 8 MS. PHARES: I'm asking how it was turned 9 over. 10 BY MS. PHARES: 11 Q. How did you turn it over, Miss Bryant? 12 A. You know, I heard what you just said, and 13 Sunbow went ahead and they had copyrighted these, so 14 obviously your opinion doesn't hold. 15 Q. You are talking to your counsel right now; 16 is that correct? 17 A. No, I'm talking to you. 18 Q. Would you please read back the last 19 question. 20 BY COURT REPORTER: How did you turn it 21 over, Miss Bryant?" 22 Q. And when you said, "I heard what you just 23 said", were you referring to Mr. Monaghan? 24 A. What Patrick Monaghan just read of your 25 writing that I believe -- I believe you said that they had</p>
<p style="text-align: right;">Page 545</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 that you said it could only be done in a writing. 3 She's referring to what you said in your papers 4 what the copyright said -- copyright statute said. 5 MS. PHARES: Do you want to show me? 6 MR. MONAGHAN: I think it's on the record 7 already. 8 THE COURT: I think that -- 9 MR. MONAGHAN: It says Paragraph -- can I 10 finish? 11 THE COURT: Yes. 12 MR. MONAGHAN: Paragraph 17 says that 13 "critically," comma, "the Copyright Act and the 14 very agreements that Sunbow is throwing before the 15 Court at this late date reveal that a 16 relinquishment of the copyright requires a written 17 agreement and no such written agreement has been 18 produced by the Defendants." 19 And what that is referring to is this 20 unsigned JEM Agreement that has the classic 21 work-for-hire and you turn everything over, which 22 there's no proof it was ever signed, there is no 23 proof anybody ever saw her sign it. 24 THE COURT: But the witness is testifying 25 that she always -- they always turned over the</p>	<p style="text-align: right;">Page 547</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 to be conveyed in writing. And you earlier said to me, 3 well, how did they get them? You know, I mean how? If 4 you didn't have a writing. 5 Q. I'm asking -- 6 A. Well, obviously, there was an understanding 7 that it was fine and they went ahead and copyrighted it 8 without a writing. So what's the problem? 9 Q. I'm asking you now how, in your 10 understanding, you were the person -- you are saying that 11 this was given to them. How did you do it? Did you tell 12 them something? Did you write something? 13 A. Some of the things I did with Griffin-Bacal 14 and Sunbow were part of the long period of writing -- I 15 would say, a couple thousands -- thousand pieces of music. 16 Two, three, 400 pieces a year, and that many arrangements 17 as well. And we worked constantly. And there was an 18 understanding. They always got the copyright. And I saw 19 that's a copyright. So I don't know that there were 20 agreements that went along with all of those, but that was 21 fine, that was our working arrangement. And we got -- and 22 it was also fine that we got royalties, and it was fine 23 that they kept the publishing. We had the same publisher 24 for Griffin & Bacal and for Sunbow, Starwild/Wildstar. 25 And the companies worked together, and developed</p>

<p style="text-align: right;">Page 548</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 properties together, and they copyrighted it. So 3 obviously you can copyright it without a written 4 agreement.</p> <p>5 Q. So you are claiming that you gave away your 6 copyright, you don't remember how; is that correct?</p> <p>7 A. We gave away our copyright. That was our 8 working agreement with them.</p> <p>9 Q. Okay. And when you gave away your 10 copyright, how is it that you -- how is it that you are 11 claiming that you have rights to the performance 12 royalties?</p> <p>13 A. Same deal as Michelin & Company.</p> <p>14 Q. That's not what I'm asking you.</p> <p>15 A. You asked me how is it. And, I mean, it 16 worked that way and it worked that way the entire time we 17 worked with Griffin-Bacal and Sunbow.</p> <p>18 Q. So you are saying you don't have any rights 19 as a copyright owner. You just have whatever rights you 20 made with Griffin -- with Sunbow?</p> <p>21 A. I'm saying I reserved my writer's rights 22 royalties.</p> <p>23 Q. Did you have that conversation with 24 somebody? Your writer's rights? Now you are saying when 25 you reserved your writer's rights. We are talking about</p>	<p style="text-align: right;">Page 550</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. Yes. 3 Q. They've been published on print? 4 A. I don't know. 5 Q. I'm asking you: Have there ever been a 6 print publication of any of your jingles?</p> <p>7 A. I don't know. I -- not that I know of. I 8 really don't know.</p> <p>9 Q. And has anybody ever recorded a phonograph 10 record of any of your jingles?</p> <p>11 A. Jingles? I'm not sure.</p> <p>12 Q. Does that mean you don't know?</p> <p>13 A. I had some other -- I had some other uses of 14 my jingles, but I can't remember if any of them ever wound 15 up on record.</p> <p>16 Q. Did anybody ever put a jingle of yours in 17 the -- when they were making a movie, did they ever put 18 any of your jingles in the sound track of a movie?</p> <p>19 A. Not me. Ford had that happen.</p> <p>20 Q. It was something he had written?</p> <p>21 A. Yeah.</p> <p>22 Q. But nothing for you?</p> <p>23 A. You want to know if it was ever in another 24 context?</p> <p>25 Q. No. I just want to know whether or not</p>
<p style="text-align: right;">Page 549</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 here -- and I write here writer's share of the performance 3 royalties. Is that correct?</p> <p>4 A. Among other rights.</p> <p>5 Q. And what other rights did you talk about?</p> <p>6 A. The writer's share of other publishing 7 income.</p> <p>8 Q. Okay. When you had your -- the deal that 9 was involved with Michelin, with Spence Michelin and with 10 G.B.I. and another advertising agency, did you have print 11 rights with those people?</p> <p>12 MR. MONAGHAN: Can we have a definition?</p> <p>13 I'm not sure what that is.</p> <p>14 Q. Did you have the kinds of publishing rights 15 that we are talking about, among the other rights? Did 16 you reserve -- was that part of your deal with Spence 17 Michelin?</p> <p>18 A. The deal was we had the writer's rights and 19 other music publishing income. The writer gets half and 20 the publisher gets half. And the public performance -- 21 the checks are sent separately to the two parties. But in 22 other music publishing income the publisher receives and 23 accounts to the writer.</p> <p>24 Q. Has any -- have any of your jingles ever 25 been published?</p>	<p style="text-align: right;">Page 551</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 anybody ever exercised any of these --</p> <p>3 A. In a record or --</p> <p>4 Q. -- or made any use of any of these other --</p> <p>5 these other rights.</p> <p>6 A. -- jingles.</p> <p>7 I just remember something to do with Johnny 8 Carson I used to get checks from. I'm not sure what that 9 was. Checks -- Johnny Carson used to send me checks.</p> <p>10 Q. You are telling me what your deal was with 11 Spencer Michelin, the one you agreed to do when you moved 12 over and started doing advertising for G.B.I. --</p> <p>13 MR. MONAGHAN: Objected to the form of the 14 question several times. But I think, your Honor, 15 understanding we're talking about the deal between 16 Michelin and G.B.I., not her deal with Spence 17 Michelin. The question is saying --</p> <p>18 MS. PHARES: All right, I'll rephrase it.</p> <p>19 MR. MONAGHAN: -- you are dealing with 20 Spence Michelin rather than --</p> <p>21 MS. PHARES: I'll reformulate.</p> <p>22 THE COURT: Okay, you can reformulate it 23 over lunch. We're going to break for lunch until 24 2:00 o'clock.</p> <p>25 I would like to have a conversation when we</p>

<p style="text-align: right;">Page 552</p> <p>CAROL ANNE BRYANT - CROSS/PHARES come back, all right?</p> <p>MR. MONAGHAN: Okay, Judge.</p> <p>THE COURT: See you then. Have a nice lunch.</p> <p>THE WITNESS: Thank you.</p> <p>(Luncheon Recess: 12:30 p.m.)</p> <p>A F T E R N O O N S E S S I O N (Reconvened: 2:30 p.m.)</p> <p>(Trial resumes on the record, in open court - counsel present)</p> <p>C A R O L A N N E B R Y A N T, the Plaintiff, previously duly sworn by the Court, resumed the stand and testified further as follows:</p> <p>THE COURT: I want the record to reflect that with the permission of all the parties in this lawsuit that I had a discussion with the Plaintiff, her attorney was present in Chambers. And we are now back in session.</p> <p>Let's go forward.</p> <p>CROSS-EXAMINATION</p> <p>BY MS. PHARES: (Continued)</p> <p>Q. Miss Bryant, when you worked at Michelin & Co. you were an employee; is that correct?</p>	<p style="text-align: right;">Page 554</p> <p>CAROL ANNE BRYANT - CROSS/PHARES</p> <p>A. Ford had two more years on his contract, about two more years at Michelin & Company. And I started my own company, Energon Music, and obviously the jingle business.</p> <p>Q. But when you and Ford Kinder first started your company did you continue -- did you do work for Michelin & Company?</p> <p>A. No. Michelin & Company was a competitor of ours.</p> <p>Q. Okay, thank you.</p> <p>And then at that time you did work for Griffin-Bacal; is that correct?</p> <p>A. Not initially.</p> <p>Q. Not initially?</p> <p>A. We did music -- we kind of continued Anne Bryant Music. I had a rolling start. And my clients rolled into -- kind of rolled into Kinder-Bryant. Anne Bryant Music became Kinder & Bryant when Ford was cleared of his contract.</p> <p>Q. I see. And then -- and then, after that, you began doing work for Sunbow Productions, Inc. That is, you and Kinder & Bryant began doing work.</p> <p>A. Let me just think about that. We worked for Griffin-Bacal. In September of '83 that was the first</p>
<p style="text-align: right;">Page 553</p> <p>CAROL ANNE BRYANT - CROSS/PHARES</p> <p>A. Yes.</p> <p>Q. And your job responsibility was to write music?</p> <p>A. Write music, arrange music, orchestrate it, conduct it, produce it. And supervise other people's writing.</p> <p>Q. But it wasn't your job to negotiate agreements, was it?</p> <p>A. Not to negotiate.</p> <p>Q. And about what were the years that you were at Spence -- Michelin & Co.?</p> <p>A. Michelin? '77 through sometime in '81.</p> <p>Q. And then when did Kinder & Bryant begin?</p> <p>A. Oh, in 1983. June 10th 1983.</p> <p>Q. And when you first formed Kinder & Bryant were you doing -- continuing to do advertising work?</p> <p>A. Yes. I had a company in between Michelin & Company that did advertising, writing music.</p> <p>Q. And were you -- did you -- did Kinder & Bryant then do work for Michelin & Co.?</p> <p>A. No. Ford Kinder and I were both employees of Michelin & Company.</p> <p>Q. But after you went off and formed your own company?</p>	<p style="text-align: right;">Page 555</p> <p>CAROL ANNE BRYANT - CROSS/PHARES</p> <p>time I worked with Griffin-Bacal.</p> <p>Q. Griffin-Bacal?</p> <p>A. And I don't remember when Sunbow -- both of us had written -- I had written a theme for Sunbow two years before when I was at Michelin & Company. But -- I'm trying to think --</p> <p>Q. I'm just trying to think of kind of when --</p> <p>A. Sunbow happened.</p> <p>Q. -- when Kinder & Bryant started working for Sunbow?</p> <p>A. I'm not exactly sure of how long it took --</p> <p>Transformers moved really quickly from a jingle and it was very successful and we did a lot of jingle work on it.</p> <p>Then it became a T.V. show.</p> <p>Q. We don't have to go onto where --</p> <p>A. That's when I started working for Sunbow.</p> <p>Kinder & Bryant.</p> <p>Q. You did a Transformers jingle for G.B.I.?</p> <p>A. Uh-huh.</p> <p>Q. And you were part of Kinder & Bryant when you did that?</p> <p>A. I was Bryant.</p> <p>Q. Yes. No, I know that. But I meant you had a company at the time you did it?</p>

<p style="text-align: right;">Page 556</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. Yes. 3 Q. And then shortly after that you began 4 working for Sunbow doing the T.V. production for the 5 Transformers series? 6 A. We didn't do that much. We did an alternate 7 recording of the theme for the T.V. Series. I think the 8 T.V. Series was '84 or '85. I don't remember. But it was 9 pretty quick that they got into it. And I remember we did 10 some instrumental version of it or two. But on the jingle 11 we did lots of edits and then future arrangements and 12 what-not. 13 Q. So it may have been, if you recall, starting 14 Kinder and Ford together back in '83, it might have been 15 as soon as a year, within a year you started doing 16 production work for Sunbow? 17 A. Yeah, right. Same piece of music. 18 Q. And when you -- '83. 19 Now, I want to go back a little bit. So 20 when you were at Michelin & Co., you weren't actually 21 negotiating the agreements, right? Isn't that what you 22 testified -- 23 A. Yes, I did testify to that. 24 Q. And did you ever see any of the written 25 agreements at Michelin & Co.?</p>	<p style="text-align: right;">Page 558</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 production work for writing jingles, but you weren't 3 handling the business relationship that Michelin & Co. had 4 with its clients, were you? 5 A. Not exactly true. Spence relied on me to 6 sound out the do-ability of things with numbers and that's 7 why I happened to know when the fee was low, you know, can 8 we deliver on this? We had musicians to pay. We had 9 timing. We had the number of hours that went into the 10 things. I was the one who planned all the sessions. He 11 wanted to know if these things were do-able. And I was 12 his music director. 13 Q. He was consulting you certainly about the 14 budget, how he was going to do this, right? 15 A. He told me about it. 16 Q. But that's because he was putting it into a 17 final agreement, right? 18 A. Yeah, make sure everything was right. The 19 basic parts of that agreement I think were the same for 20 everybody that I saw. 21 Q. Do you remember just a couple of days ago, 22 on the 7th, that you testified at great length about the 23 process you were just reviewing a moment ago about how -- 24 the transfer from the jingle for Transformers, and you 25 testified that Kinder & Bryant were paid a 3,500-dollar</p>
<p style="text-align: right;">Page 557</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. Yes. 3 Q. They had written agreements? 4 A. Yes. 5 Q. You say that very emphatically? 6 A. Well, no, Spence Michelin was a stickler 7 about everything. 8 Q. And so when you said that you had sort of 9 the same agreement with G.B.I., is that -- that same 10 agreement didn't also include written contracts? 11 A. See, it must have been contract -- I don't 12 know. Those were Joe's words. Okay, guys, same deal as 13 Michelin & Company, okay? Okay. Sit down, play the song 14 and we started. And -- you know -- 15 Q. Well, when you say that there must have been 16 contracts, that's because that was the way you did 17 business at Michelin & Co., right? 18 A. I would think there would have been 19 contract -- I don't remember. I know that we knew what we 20 were doing, when I knew that we had been operating -- when 21 we worked for Joe Bacal and Sunbow and Michelin & Company 22 we were just rolling the deal over and we did the same 23 thing. 24 Q. But when you were at Michelin & Company you 25 were doing -- I certainly know you were doing the</p>	<p style="text-align: right;">Page 559</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 creative fee, right? 3 A. Yes. 4 Q. And when you wrote jingles were you always 5 paid the same 3,500-dollar creative fee? 6 A. You mean for Griffin-Bacal? 7 Q. For Griffin-Bacal, yes? 8 A. To my knowledge, it was always \$3,500. It 9 never changed. That I remember. 10 Q. And you have also testified that Kinder & 11 Bryant never had written agreements with Michelin & Co., 12 G.B.I. or Sunbow, right? 13 MR. MONAGHAN: Object to the form of the 14 question. She said they didn't do work for 15 Michelin & Co. 16 THE COURT: All right. 17 MS. PHARES: I beg your pardon. I'll amend 18 that. 19 Q. And you've testified, have you not, that 20 Kinder & Bryant never had written agreements with G.B.I. 21 or Sunbow, right? 22 A. No, I just don't really remember them. 23 Q. Do you think that there were or you don't 24 remember them? 25 A. Well, I don't really remember them. I</p>

<p style="text-align: right;">Page 560</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 remember the terms. 3 Q. All right. But didn't you also testify 4 generally Kinder & Bryant had written contracts with all 5 the major advertising -- advertising companies that it 6 dealt with? 7 A. I don't remember that. 8 MS. PHARES: Page 74, starting Line 14. 9 MR. PRIMIANO: March 31st? 10 A. Give it to me so I understand what you are 11 saying. 12 Q. Miss Bryant, I'm going to read from your 13 deposition of March 31st, 2003, starting with Line 13 -- 14 rather. 15 "As a general matter while you were 16 associated with Kinder & Bryant, did Kinder and 17 Bryant use a written contract in their business 18 dealings with its clients, particularly those that 19 you had just named?" 20 Now I'm going to skip the interruption of 21 Mr. Monaghan. And your answer was: 22 "As a general rule there was always some 23 kind of piece of paper I think that existed. 24 There may have been exceptions, but some kind of 25 royalty assignment or payment agreement or</p>	<p style="text-align: right;">Page 562</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 identification) 3 Q. And I'm handing these to you for 4 identification. I'm referring to B and C here. 5 A. Shall I say that that's not a C? 6 Q. That's all right. I've identified them for 7 the record. 8 I would like to know, have you ever seen 9 these before? 10 MR. MONAGHAN: This is in the material that 11 was just produced to us within the last two weeks, 12 correct? 13 MS. PHARES: I don't have the exact date, 14 but I would say it was sometime after the 15 beginning of June. 16 MR. MONAGHAN: Right, June -- according to 17 June 22nd we received a letter with those page 18 numbers. It wasn't previously produced in the 19 litigation. 20 A. I'm looking at Visionaries. There's my 21 song. I see Ford Kinder's, FK. 22 Q. Hang on, I'll tell you -- 23 A. What's the question? 24 Q. My question for you is: Have you ever seen 25 them before?</p>
<p style="text-align: right;">Page 561</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 reimbursement that set forth the terms. They were 3 often presented -- they often presented it to us. 4 That more often was the case." 5 Do you remember that? 6 A. Yes. 7 Q. Okay. And isn't it true also that Kinder & 8 Bryant also had a written agreements with G.B.I.? 9 A. I think we had some. I don't remember, 10 though. 11 MS. PHARES: I'm going to offer you what has 12 been identified as Defendant's Exhibit B and C, 13 which are two agreements both dated April 8th 1988 14 between Griffin-Bacal and Kinder & Bryant. One 15 for Transformers, one for Visionaries. Production 16 numbers Sunbow 503 or SUN 503 through 510 for 17 Transformers. And SUN 511 through 518 for 18 Visionaries. 19 MR. MONAGHAN: I don't have the Visionaries 20 there. 21 (Defendant's Exhibits B, agreement dated 22 April 8, 1988 for Transformers, marked for 23 identification) 24 (Defendant's Exhibit C, agreement dated 25 April 8, 1988 for Visionaries, marked for</p>	<p style="text-align: right;">Page 563</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. I don't -- I never saw these two before, but 3 they -- they seem to say some of the figures that we 4 worked with. 5 Q. Hang on. 6 MS. PHARES: Your Honor, if you would please 7 just ask the witness if she would answer the 8 question I've asked. 9 A. I have not seen these before. 10 Q. Okay, thank you. 11 Now, if you would turn to the signature page 12 of the Transformers contract, that's C to the page that 13 has the Sunbow 506 at the bottom. 14 And would you tell me is that Ford Kinder's 15 signature? 16 A. That looks like Ford Kinder's signature. 17 Q. And while you are still looking at that same 18 page, you see up a little farther there are initials. 19 Are those Ford Kinder's initials? 20 A. They look like Ford Kinder's. 21 Q. That's exactly what I wanted to know. 22 Now, change -- move on to the music that is 23 written on Sunbow 508. 24 A. Which one are we looking at? Transformers 25 or Visionaries?</p>

<p style="text-align: right;">Page 564</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Q. We are still with the same contract. 3 Transformers. 4 A. Transformers. Page 508? 5 Q. Uh-huh. I confess that I can't say that I 6 recognize your notation or Mr. Kinder's notation, so can 7 you identify that? 8 A. That's my notation. 9 Q. That's yours. 10 And now turning to the other exhibit, 11 Exhibit B -- 12 A. You know this is a different Transformers 13 song, right? 14 Q. Just for the moment -- I'm not really 15 interested in the piece of music for the moment. I just 16 want to talk about the agreements, all right? 17 A. Okay. And the other piece -- 18 Q. And Exhibit B, same thing, let's go to 19 Sunbow 513. 20 And would you tell me is that Mr. Kinder's 21 signature? 22 A. It looks like Ford Kinder's signature, yeah. 23 Q. And his initials farther up on that page? 24 A. It looks like his initials. 25 Q. And on the next Page 514 there are at the</p>	<p style="text-align: right;">Page 566</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 MR. MONAGHAN: I object to the form of the 3 question. 4 THE COURT: Overruled. 5 A. Very truly yours, Kinder & Bryant, Ltd. name 6 of contractor. 7 Q. And it's after the word "by"; is that 8 correct? 9 A. By Ford Kinder. 10 Q. And underneath it he's written what? 11 A. President. 12 Q. So this contract was signed by Ford Kinder 13 on behalf of Kinder & Bryant; is that right? 14 A. Yes. 15 MR. MONAGHAN: Objection to the form of the 16 question. 17 THE COURT: I'll allow it. 18 Q. Now -- 19 MR. MONAGHAN: It says what it says. We're 20 not debating that. Just as far as it being on 21 behalf of is an entirely separate issue. The 22 document does say that. That's as far as it goes. 23 THE COURT: Well, the objection is 24 overruled. That's it. Let's go. 25 Q. Now, except for the date and the names on</p>
<p style="text-align: right;">Page 565</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 end of those two additional paragraphs 6A and B, are those 3 his initials or -- his initials? Yes? 4 A. Yes. It looks like they would be, yeah. 5 Q. And then moving to 516; is that musical 6 notation yours? 7 A. Yes. 8 Q. Okay. Now, both of these agreements are 9 signed by Mr. Kinder on behalf of Kinder and Ford; is that 10 correct? 11 A. Kinder & Bryant you mean? 12 Q. That's what I was going to say. 13 A. Kinder & Bryant. 14 Q. Kinder & Bryant, I beg your pardon. 15 A. Let me see -- 16 Q. Is that correct? 17 A. Very truly yours, Kinder & Bryant. Do I 18 read this or -- 19 Q. And you don't have to look at Mr. Monaghan 20 for this answer. My question only is -- 21 A. Well, how do you expect me to answer what it 22 is about if you have not given me a chance to read it? 23 Q. No, I didn't ask you that. 24 Mr. Kinder signing on behalf of Kinder & 25 Ford -- I mean, Kinder & Bryant.</p>	<p style="text-align: right;">Page 567</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 the works and the parties these are formal agreements; is 3 that right? With the spaces you just fill in? 4 A. They appear to be form agreements. 5 Q. And would you look at Paragraph 2 of either 6 of the agreements, although I would recommend Visionaries, 7 because the photocopies are marginally better. 8 A. Yeah, it is. Yeah. 9 Q. And in that paragraph Kinder & Bryant is 10 assigning all of its copyrights in the material it 11 delivers to Sunbow -- I mean, to G.B.I., and agrees that 12 the material delivered is work-for-hire within the meaning 13 of the 1976 Copyright Act of the U.S., isn't that so? 14 A. That's what it says. 15 Q. Okay. And it appears, wouldn't you say, to 16 the extent that you've ever said that Kinder & Bryant 17 didn't have agreements with G.B.I., this suggests that 18 that's wrong, isn't that correct? 19 A. This is a jingle agreement. 20 Q. I said with G.B.I. 21 A. Yeah. Yeah. 22 Q. Am I correct? 23 A. I'm sorry, would you read that back, please? 24 Q. I said to the extent that you have ever said 25 that Kinder & Bryant did not have written agreements with</p>

<p style="text-align: right;">Page 568</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 G.B.I., that was incorrect? These are agreements of 3 between G.B.I. and Kinder & Bryant, aren't they? 4 MR. MONAGHAN: I object. I object. If I 5 could get my statement on the record, your Honor? 6 What we have here is a document which has 7 just been produced in litigation, so we have not 8 even crossed that point as yet. Just produced in 9 the last two weeks. We also have one that is (A) 10 a copy and it is only signed apparently by one 11 side. It has an excepted provision there with no 12 corresponding signature on behalf of the other 13 party. And, so far, Miss Phares is treating it 14 already in evidence. 15 MS. PHARES: Hang on. Are you objecting to 16 it going into evidence. 17 MR. MONAGHAN: Yes, I am. 18 MS. PHARES: Your Honor, this is being 19 offered at least in part for the fact that these 20 are agreements where the intent of Kinder on 21 behalf of the president is showing their intent to 22 enter into this contract on behalf of Kinder & 23 Bryant. 24 THE COURT: Miss Bryant, was Mr. Kinder the 25 president?</p>	<p style="text-align: right;">Page 570</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. Yes. 3 Q. Are you with me? 4 A. I'm with you. 5 Q. Okay. I just want to establish to the 6 extent that you have testified in the past that Kinder & 7 Bryant did not have agreements with G.B.I.; is that not 8 incorrect? 9 A. I'm not sure what I -- if I ever said 10 anything like that. I think -- I don't remember. I -- I 11 didn't sign this so, you know -- I know that we had a way 12 that we worked with Griffin-Bacal and a way that we worked 13 with Sunbow and everything seemed to go according to Hoyle 14 during the whole time. 15 Q. Is there a reason you don't remember it is 16 because these agreements were usually done by Mr. Kinder? 17 A. He may have -- yeah. These two were. 18 Q. These two were. 19 And did Mr. Kinder tend to do the kind of 20 paperwork associated with the company or was he 21 responsible for it? 22 A. Well, the staff did the paperwork largely, 23 you know. We put those systems in place. There was a lot 24 of paperwork. 25 Q. I'm sure.</p>
<p style="text-align: right;">Page 569</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 THE WITNESS: He was the president and I was 3 the chairman. 4 THE COURT: Okay. All right, they are 5 accepted in evidence. 6 (Defendant's Exhibits B and C marked and 7 received in evidence) 8 MR. MONAGHAN: Can we possibly have an 9 explanation why it was not produced previously in 10 the case? I have not been able to take any 11 discovery on this document. I have not been able 12 to ask Mr. Kinder any questions about how he did 13 that. 14 THE COURT: When we began this trial, 15 counselor, I said to you the battle is going to be 16 fought on the grounds that you all have ordained 17 it to be fought on. Whatever discovery is added 18 at the last minute, apparently they cobbled 19 together at the last minute and gave it to you. I 20 was not going to put this trial aside for further 21 discovery. That's it. If you don't like it put 22 your exception on the record. 23 All right, let's go. 24 BY MS. PHARES: 25 Q. Miss Bryant?</p>	<p style="text-align: right;">Page 571</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. Yeah. 3 Q. But did Mr. Kinder do the agreements with 4 your other advertising agencies? 5 A. You know, I said there was some kind of 6 piece of paper. It could be a purchase order. 7 Q. Do you know whether or not Kinder & Bryant 8 was an S Corporation or a C Corporation? 9 A. Oh, gosh, I used to know that and I've 10 forgotten. I'm not sure. 11 Q. Who did the tax returns for Kinder & Bryant? 12 A. Robin, Spielman, Slaten and Hoffen. 13 [phonetic] 14 Q. Who handled the relationships for that 15 company? 16 A. We always went together. 17 Q. You and Mr. Kinder? 18 A. Yes. 19 Q. And do you know what a 1099 is? Do you? 20 A. Yes. 21 Q. What is that? 22 A. It's -- it's miscellaneous income. 23 Q. And who gets a 1099? 24 A. An independent contractor, usually. 25 Q. And did you ever get those?</p>

<p style="text-align: right;">Page 572</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. From who? 3 Q. From the entities that you worked for Kinder 4 & Bryant? 5 A. They paid us as a corporation. 6 Q. And did the corporation receive 1099s? 7 A. I don't think so. I don't remember seeing 8 any accounting meetings. We got 1099s from BMI, Ford and 9 I. 10 Q. I understand that, but that is not my 11 question? 12 A. I'm sorry, I was just trying to think about 13 1099s. 14 Q. Let's go back a moment to Defendant's 15 Exhibits B and C, all right? 16 A. Okay. 17 Q. I want to direct your attention to Paragraph 18 2A, and I still think the Visionaries contract is the best 19 to read. 20 A. It is. They are both terrible. 21 Q. Under that agreement it says you all were 22 paid a basic fee of \$250, right? 23 A. Yes. 24 Q. And then if they selected what you were 25 going to -- what you had written, they paid you more so as</p>	<p style="text-align: right;">Page 574</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Q. -- that if you determine to use material in 3 radio, television and/or other advertising purposes you'll 4 give us written notice after -- and then after giving the 5 written notice of that determination you will also pay 6 \$1500 less the payment that was made in Paragraph 3A, 7 which is -- and I misspoke earlier when I said 2A -- 8 A. Piano demo. 9 Q. So you got a total here of 1500 if they 10 actually took your work; is that correct? 11 A. No. We got 250 for each piano demo, then we 12 got \$1500 for each arrangement, and we got \$3500 for a 13 creative fee. 14 Q. When the checks came in, did you handle the 15 bookkeeping of those, not mark them up against the 16 contract? 17 A. No, the office -- administrative lady, Pam 18 Burgoin did. 19 Q. So you never saw those checks as they came 20 in? 21 A. No. She certified that they would come in. 22 Q. So you could be mistaken about whether or 23 not these were additional fees of 1250 as opposed to 250, 24 1500 and 3500, right? Because you weren't doing that? 25 A. No. I wasn't mistaken about that. I knew</p>
<p style="text-align: right;">Page 573</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 to make up the 1500-dollar fee; is that right? 3 A. That was the arranging fee. 4 Q. Well -- 5 A. Producing, radio, television, and other 6 advertising purposes. That's what it says. 7 Q. Right. It says -- 8 A. Pay an additional sum of \$1500 -- 9 Q. Less -- 10 A. Well, these are the numbers, but it was 11 always billed as 1500, 3500 and 250, so -- 12 Q. So the -- this agreement, though, reflects 13 the payments that you got even if you don't necessarily 14 remember exactly what they were for; is that correct? 15 A. I remember what they were for. 3500 was a 16 creative fee. 17 Q. Hang on. 18 A. 1500 was the arranging fee. 19 Q. Miss Bryant -- Miss Bryant, can we just get 20 started here again. 21 In Paragraph 2B does it say that if you 22 determine -- and this is written as though it were a 23 letter for Mr. Kinder from Kinder & Bryant to 24 Griffin-Bacal? 25 A. Uh-huh.</p>	<p style="text-align: right;">Page 575</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 what checks were coming in. It's just that I didn't take 3 them to the bank. 4 Q. How did you know what was coming? 5 A. Well, I knew what we had done and I knew 6 that we used to budget our money, because we had to outlay 7 payroll and say, oh, God, we're nearly broke. Well, we 8 have all these piano demos money coming in this week and 9 we knew what was coming in because we had to payroll for 10 people. 11 Q. Do you think G.B.I. paid you more than they 12 were required to under their agreement with you? 13 A. I don't know. 14 Q. Well, let's finish this off. In 3C -- 15 A. I know there was some changes at the very 16 end for the fees. 17 Q. Miss Bryant, at the moment I have another 18 question. 19 In 3C it says that if you determine -- that 20 is, "if G.B.I. determines in its discretion to use the 21 materials in more than one of the three major markets, 22 that is New York, Chicago and Los Angeles, you will after 23 such use pay us as a one time payment such additional sum 24 as will increase the royalty payments hereunder to 3500 25 inclusive of all the payments made to us pursuant to some</p>

<p style="text-align: right;">Page 576</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Paragraphs 3A and 3B;" is that what it says? 3 A. Yes. 4 Q. You think, though, they were paying you more 5 than they had to pay you; is that correct? 6 A. No, I'm saying that, you know, there could 7 be 12 piano demos. So that 250 was paid to do a piano 8 demo, and we always did at least two of them. And so 9 that's what the 250 was for. So we would do these piano 10 demos which are a lot of work. 11 Q. But you don't really know that because you 12 were not logging in monies as it came in. 13 A. I knew every year -- I don't have a file 14 system in my mind of every single one of them. Some we 15 wrote three versions. Some -- most we wrote two. Every 16 now and then we wrote four. So this is pretty general 17 that 250 would have been times four if there were four 18 piano demos. 19 Q. Now, I want to also direct your attention to 20 Paragraph 3D. And doesn't that say that except -- 21 A. Which one is D? 22 Q. It follows C. 23 A. Is that C the top one? Oh, there's D. 24 Q. See it? 25 And does it not say that "except as</p>	<p style="text-align: right;">Page 578</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 they agreed to make to you for that, isn't that correct? 3 A. Yeah. Yes, but -- 4 Q. Thank you. 5 A. -- basically -- 6 Q. And isn't it also true that when you moved 7 on and worked for Kinder & Bryant that you had -- I mean, 8 that Kinder & Bryant worked for Sunbow, that you also had 9 written agreements with Sunbow? 10 A. I don't remember any except for the one that 11 you gave us. That was a big problem for us. 12 Q. Have you not testified that there were 13 written agreements with Sunbow? 14 A. I don't think I have. 15 Q. Didn't you testify that Ford Kinder, your 16 business partner, told you the Sunbow agreements were 17 written? 18 A. I don't remember that. Refresh my memory. 19 MS. PHARES: March 2003 deposition, 44, Line 20 3. 21 Q. All right, I'm reading you again, Miss 22 Bryant, from your deposition from March, 2003. This of 23 course was before we had produced the unsigned agreement. 24 "Did you have a written agreement to produce 25 the compositions at issue in this case?</p>
<p style="text-align: right;">Page 577</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 otherwise expressly provided for herein neither we nor the 3 artist shall be entitled to any payment and/or other 4 consideration;" does it not? 5 A. It says that. 6 Q. And it doesn't provide for any other uses 7 except for the ones that are laid out in this agreement, 8 isn't that right? 9 A. It says, advertising. 10 Q. It says for advertising and then it says -- 11 A. The purposes of advertising. 12 Q. It says the particular payments that they 13 will lay out are the basic payment following receipt of 14 the materials. A payment if they give you notice that 15 they are going to use the material in a radio 16 advertisement, and then an additional payment if it is 17 used in a national radio advertisement. There's nothing 18 else spelled out in this agreement, is there? 19 A. That's basically it. But the notice was, 20 hey, we need dubs of that this afternoon. I mean, it's 21 move like lightening. We did hundreds of pieces of music 22 a year. 23 Q. I'm not talking about the work that you did. 24 I'm just asking you: This is the agreement that you did 25 when you worked-for-hire and these are the payments that</p>	<p style="text-align: right;">Page 579</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 "Answer: Ford Kinder told me that there was 3 a contract. I don't remember ever signing a 4 contract with them, but he was my partner and he 5 said there was a contract at some point in our 6 association with those people." 7 And then later or -- so, according to your 8 testimony in March, Mr. Kinder had told you there was a 9 written contract with Sunbow, had he not? 10 A. Was he talking about Sunbow? 11 Q. He was. 12 MR. MONAGHAN: Talking about B and C, G.B.I. 13 A. Aren't we talking about G.B.I.? 14 MS. PHARES: Excuse me, I asked questions 15 relating to Sunbow and the witness answered them. 16 A. But you just read something. Did I say that 17 in reference to Sunbow or to G.B.I. or what? 18 Q. Yes, that's exactly right. 19 A. We didn't do that much for Sunbow. We did a 20 huge T.V. show, but we didn't do lots of shows for Sunbow. 21 Q. Well, you did about seven or eight of them, 22 didn't you? Maybe that's why you don't remember them 23 because there weren't very many. 24 A. There was a JEM show, television show. And 25 there was a theme from My Little Pony and Friends. I</p>

<p style="text-align: right;">Page 580</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 believe the GI Joe movie theme was for Sunbow. I believe 3 it was. 4 Q. You don't know? 5 A. It started at Griffin-Bacal. See, I know 6 that Transformers started at Griffin-Bacal. It's not like 7 we did lots of television shows. We had themes that moved 8 from advertising into television themes. That's not like 9 doing a television show. JEM was a musical television 10 show. 11 Q. Miss Bryant, I'm not -- 12 A. So I'm not sure what you are referring to. 13 Q. Okay. I said if Ford Kinder told you that 14 there were written agreements you wouldn't have any reason 15 to disbelieve him, would you? 16 A. No. I just have a problem with what you 17 just asked -- read into there. I have a right to ask you 18 what you are talking about. 19 Are you talking about a Griffin-Bacal 20 statement that I made there or a Sunbow statement? You 21 produced the Sunbow agreement. 22 Q. You said that it was your practice in 30 23 years of work to have these kinds of agreements. And you 24 were asked: 25 "Were they -- were they written agreements?"</p>	<p style="text-align: right;">Page 582</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 this clearer I'm going to read back the question before 3 the passage I just read to you, all right? 4 This is, by the way, during the deposition 5 with Miss Kitson. 6 Do you remember Roseanne Kitson? 7 A. Yes, I remember her. 8 Q. She said, okay, "when you wrote the 9 compositions" -- 10 MR. MONAGHAN: What page? 11 Q. Page 43. 12 "When you wrote the compositions at issue in 13 this case were you working on a work-for-hire 14 basis? 15 "Yes, yes." 16 This is your answer: 17 "Yes, a commercial business music house." 18 Then -- 19 "Question: Did you have a written contract 20 to produce the compositions at issue in this case? 21 "Answer: Yes. Ford Kinder told me that 22 there was a contract. I don't remember ever 23 signing a contract with him, but he was my partner 24 and he said there was a contract at some point in 25 our association with those people."</p>
<p style="text-align: right;">Page 581</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 And you said -- and you said what I just 3 read is: 4 "Ford Kinder told me there was a contract. 5 I don't remember ever signing a contract with 6 them. But he was my partner and he said there was 7 a contract at some point in our association with 8 those people." 9 A. I'm sorry, I just -- 10 Q. Now -- 11 A. -- I don't know whether you are talking -- 12 THE COURT: There is no question pending. 13 Q. There is no question pending. 14 THE COURT: Don't answer anything that is 15 not pending. 16 THE WITNESS: I can't answer it? 17 THE COURT: There is no question pending. 18 THE WITNESS: Well, she keeps talking about 19 what I said. What did I say? 20 THE COURT: Miss Bryant -- Miss Bryant, 21 let's have a question and then an answer. 22 THE WITNESS: Okay. Sorry. 23 THE COURT: It's all right. 24 THE WITNESS: I'm getting confused. 25 Q. I'll tell you what, in order to sort of make</p>	<p style="text-align: right;">Page 583</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 MR. MONAGHAN: You read the word, yes, which 3 is not in the answer. 4 MS. PHARES: I beg your pardon. It just 5 begins with what Ford Kinder told me, but other 6 than that I've now read it three times. I'm sure 7 one time I got it right. 8 Q. And in March -- in that same deposition 9 where you were asked whether your working arrangement at 10 Kinder & Bryant covered the copyright ownership of the 11 compositions you created, didn't you also state under 12 oath -- and I'm now at 49 -- 13 "I believe so. I believe it termed it -- I 14 can see work-for-hire in my mind, yes." 15 MR. MONAGHAN: Can you read the question 16 that preceded it and the answer? 17 Q. All right. 18 "Did those working agreements here at Kinder 19 & Bryant or Michelin & Co. cover the copyright 20 ownership of the question of the compositions you 21 created? 22 "Answer: I believe so. I believe it termed 23 it -- I can see work-for-hire in my mind, yes." 24 Okay, now, when you referred to it terming 25 something work-for-hire, weren't you referring to a</p>

<p style="text-align: right;">Page 584</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 written contract? 3 A. I remember Michelin & Company too. 4 Q. And when you recalled you were seeing 5 work-for-hire in your mind, weren't you talking about 6 seeing a written contract? 7 A. Well, I have them now with the people I work 8 for. 9 Q. Is the answer yes? 10 A. Yes. I've seen that a lot. 11 Q. You testified earlier this morning that you 12 didn't register your jingles, and I think you were talking 13 about registering them with -- with BMI? 14 A. Yes. 15 Q. Do you know who did? 16 A. The administrator. 17 Q. Okay, and -- 18 A. Publisher's administrator. 19 Q. Who in your office had any -- or who, if 20 anybody, in your office had any relationships with the 21 music administrator? 22 A. Bill Dobishinsky. 23 Q. At the beginning? 24 A. Well, he was -- he was the administrator. 25 He came to town once in a blue moon. He was from </p>	<p style="text-align: right;">Page 586</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Starwild was -- I mean, Wildstar was the ASCAP publisher 3 and Starwild was the BMI publisher, correct? 4 A. That's right. 5 Q. And who arranged, by the way, for the 6 incorporation of Kinder & Bryant; do you remember? 7 A. Who arranged for the incorporation of it? 8 Q. Uh-huh. 9 A. You know, it used to be Kinder, Bryant and 10 Aquino for a short time. I don't remember who 11 incorporated that. But I know when Sarah Aquino moved 12 west and it became Kinder & Bryant, that Pam did that. I 13 don't know if you did Kinder Bryant and Aquino, Pam 14 Burguin. The name changed. 15 Q. But you don't remember who did the 16 incorporation work at the beginning? 17 A. I would just be guessing. 18 Q. Do you think you did it? 19 A. No. 20 Q. Do you think Ford Kinder probably handled 21 the work? 22 A. No. 23 Q. I don't mean did it himself. I mean, did he 24 arrange for a lawyer to set up your corporation? 25 A. I told you I would be guessing, but I can </p>
<p style="text-align: right;">Page 585</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 California. And he would come over and see us. 3 Q. And did you both meet with him? 4 A. Yes. 5 Q. And how come he came to see you if he wasn't 6 your administrator -- or he was the administrator you said 7 earlier for the music publisher, isn't that correct? 8 A. Yes. 9 Q. But he would come to see you personally? 10 A. Well, we -- we had the most registrations 11 and he would come and make sure everything was right and 12 clear. 13 Q. Well, he had -- 14 A. He had to file all those things, you know, 15 so he would double-check it with us. 16 Q. You had -- I thought a moment ago you said 17 you had only very few songs that you did for Sunbow and 18 Co. -- Sunbow productions? 19 A. Well, for Starwild we had a lot. We had 20 jingles and songs. The jingles were in Starwild too. 21 Q. I see. So, in other words, he was coming to 22 see you with respect to your business both for G.B.I. and 23 your business for Sunbow? 24 A. Our registrations for Starwild and Wildstar. 25 Q. And Wildstar was the ASCAP publisher and </p>	<p style="text-align: right;">Page 587</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 remember that we went to Dave Sonnenberg's office, and 3 maybe that was why. 4 Q. And who is Don Sonnenberg? 5 A. Dave Sonnenberg is a music attorney. 6 Q. Do you think he set up your corporation? 7 A. Kinder, Bryant & Aquino, yes. 8 Q. I beg your pardon? 9 A. I think he did. I think he set up Kinder, 10 Bryant & Aquino. I wish I had the same idea. It was a 11 name change. 12 Q. Were there other employees at Kinder & 13 Bryant? 14 A. Yes. 15 Q. How many? 16 A. It varied. 17 Q. Give me -- 18 A. Temporary employees, somebody -- we had 19 temporary office workers who came in two days a week. We 20 got busier and busier. And then we had two full-time 21 office people or three. Three -- no, three employees 22 steady. 23 Q. Okay. 24 A. Yeah. 25 Q. And who handled the payroll? </p>

<p style="text-align: right;">Page 588</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. We signed the checks. 3 Q. I asked you who handled payroll. 4 A. Pam Burgoin. 5 Q. And she was your office manager? 6 A. Yes. 7 Q. And so she would provide you with the checks 8 and you would sign them? 9 A. With the paper clip to the bill. And he 10 would go over them and sign them and we would both have to 11 sign the checks. 12 Q. Keep everybody honest, right? 13 A. Well, it was an artifact of Kinder, Bryant. 14 And Sarah Aquino was our partner. We all decided, two out 15 of three of us had to sign a check and we just left it 16 that way. 17 Q. All right. Now, earlier you testified that 18 you gave up the copyright when you were doing work in your 19 music arrangements between Kinder & Bryant with Sunbow; 20 that you gave up the copyright in exchange for a fee and 21 performance royalties and, remember, for the fee, the 22 performance royalties -- back to this, and other 23 royalties? 24 MR. MONAGHAN: Object to the form of the 25 question. That isn't her testimony.</p>	<p style="text-align: right;">Page 590</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Q. -- were the creative fees the same for each 3 of the programs -- each of the series for which you wrote 4 music? GI Joe -- you said you didn't write GI Joe. But 5 JEM, My Little Pony, the series that are in issue in this 6 case, all right, did you have a different creative fee for 7 each one of them? 8 MR. MONAGHAN: I'm sorry, I thought 9 originally the question had Sunbow in it. 10 Q. In the agreements with Sunbow for each of 11 the T.V. series at issue in this case, did you have a 12 different creative fee for each of them? 13 A. I don't remember the agreements. They were 14 different jobs. 15 Q. Well -- 16 A. So I can't imagine that they were exactly 17 the same. And -- I don't remember the agreements at all. 18 You see, JEM has a different situation than this. 19 Q. Well, this is for jingles? 20 A. This is in advertising. 21 Q. This is for jingles. We're not talking 22 about this anymore. I'm talking about a T.V. Series. 23 So you are saying that you can't remember 24 whether or not you had the same creative fee whether you 25 wrote all the music in JEM or you wrote some background</p>
<p style="text-align: right;">Page 589</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Q. All right, make this quick, sort of -- I 3 guess quick. Page 43. 4 And did you testify in March 31, 2003 you 5 gave up the copyright in exchange for a fee while also 6 retaining my performance rights royalties and other 7 outside royalties? 8 A. Yes. 9 Q. And did each deal have the same creative 10 fee? 11 Now, I'm talking about your agreements, 12 Kinder & Bryant's agreements with Sunbow, and I'm just 13 talking about the creative fee. 14 A. With Sunbow? 15 Q. Right. 16 A. No, it was different with Sunbow. 17 Q. Well, how was it with Sunbow? 18 A. I just need to review this in my mind. I 19 think the only television show we did was JEM of the full 20 television show they had that had a theme, and it had 21 original songs, so they were different arrangements. 22 Q. Miss Bryant, you don't have to talk about 23 what was in each program. We will maybe come to that 24 later on. But for right now I'm just asking you -- 25 A. About the theme.</p>	<p style="text-align: right;">Page 591</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 music cues and an opening theme for another one? 3 MR. MONAGHAN: What is the other one? 4 That's the problem. 5 Q. Well, how about Transformers? 6 MR. MONAGHAN: Well, excuse me. How about 7 it? It's a jingle. 8 MS. PHARES: Miss Bryant said -- 9 THE COURT: I take it that's an objection to 10 form? 11 MR. MONAGHAN: It is. I'm sorry, your 12 Honor. I apologize. 13 THE COURT: All right. Sustained as to 14 that. 15 THE WITNESS: Maybe we should go one by one. 16 Q. Do you recall what the creative fee was for 17 Kinder & Bryant when they wrote the music for Transformers 18 for Sunbow? 19 A. We didn't write the music for Transformers 20 for Sunbow. We wrote it for Griffin-Bacal. 21 Q. Did you write any music cues for the 22 Transformers series? 23 A. I did it -- a new arrangement for the 24 opening theme. 25 Q. All right, new arrangement is music, is it</p>

<p style="text-align: right;">Page 592</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 not? 3 A. Thank you. I've always thought so, yes. 4 Q. So would I. 5 A. It's not music that gives you royalties. 6 It's the melody that gives you the royalties. An arranger 7 doesn't get royalties. 8 Q. Well, if an arranger does a new and original 9 work based on something, doesn't an arranger get 10 royalties? 11 A. No. 12 Q. Isn't that a derivative work? Why 13 wouldn't -- 14 A. No, that's an arrangement of an existing 15 song. If I do an arrangement of Somewhere Over The 16 Rainbow Harold Arlen's estate gets the music royalties, 17 not me. I get a fee. So it would be an arranging fee. 18 Q. If you did that would you sign a 19 work-for-hire agreement? 20 MR. MONAGHAN: Object. Speculative. Not at 21 issue. 22 A. For an arrangement? 23 THE COURT: Overruled. 24 Go ahead. 25 A. Are you asking me if I would sign a</p>	<p style="text-align: right;">Page 594</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 take a break. So let's everybody do the same 3 thing. 4 MS. PHARES: Fair enough. 5 THE COURT: Come back and we'll ask more 6 questions, all right? 7 THE WITNESS: Okay. 8 (Recess: 3:25 p.m.) 9 (Resumed: 3:45 p.m.) 10 CAROL ANNE BRYANT, 11 the Plaintiff, having been previously 12 duly sworn by the Court, resumed the 13 witness stand and testified further as 14 follows: 15 THE COURT: Miss Bryant, I think I might 16 tell you something about yes or no answers when 17 somebody says answer yes or no. The first is yes, 18 the second is no, the third is I can't answer it 19 that way. And that may speed things up. 20 All right, let's go. 21 CROSS-EXAMINATION 22 BY MS. PHARES: (Continued) 23 Q. One thing I would like to do before I 24 forget, I would like to give you a document which Miss 25 Saffer gave to you this morning, which is Defendant's</p>
<p style="text-align: right;">Page 593</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 work-for-hire agreement for an arrangement? 3 Q. Uh-huh. 4 A. I've been doing arrangements for a long 5 time. Nobody asked me to sign an agreement. I do my 6 arrangement, I send my bill, payroll the session, and they 7 reimburse me. 8 Q. They send you an invoice? 9 A. They send me an invoice? 10 Q. Uh-huh. Do they send you a statement for 11 this is what we've agreed and you are going to pay -- 12 we're going to pay you -- I see what you are saying. 13 They don't send you any paperwork for that? 14 A. It's usually a stub for an invoice number, 15 yes. 16 Q. Oh, there is an invoice number. 17 Have you ever read the back of the invoice? 18 A. Which invoice are we talking about? 19 Q. The one you just mentioned. 20 A. Ogilvy & Maver. 21 Q. Which one? 22 A. Which one did I just mention? 23 Q. Let's go on. 24 THE COURT: I'll tell you what, I'm going to 25 recompose my mind for ten minutes. We're going to</p>	<p style="text-align: right;">Page 595</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Exhibit A. 3 MS. PHARES: And, I'm sorry, your Honor, I 4 don't have another copy for you. 5 THE COURT: It's all right. 6 MS. PHARES: Because this is the one we had 7 to get from the Defendant -- I mean, the 8 Plaintiff. 9 Q. This is a clearance form that was signed by 10 you; is that correct? 11 A. That's me, yes. 12 MR. MONAGHAN: We have that, if the Court 13 wants it. 14 Q. By Anne Bryant. 15 THE COURT: Mr. Monaghan, are you saying you 16 have an extra copy? 17 MR. MONAGHAN: Yes, I think so. 18 THE COURT: If you have, I'll take it. 19 MS. PHARES: This is the same one. I think 20 the problem is I don't have the one I needed. 21 THE COURT: Thank you. 22 Q. All right. Now, having gone through all 23 that exercise I'm going to instead ask you if you would 24 look at Plaintiffs' Exhibit No. 39. 25 And that is also a clearance form, is it</p>

<p style="text-align: right;">Page 596</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 not? 3 A. Yes, it is. 4 Q. And the date on it is what? 5 A. 5/4/88. 6 Q. So that's when you were working with Kinder 7 & Bryant; is that correct? 8 A. That's true. 9 Q. And that is signed by Mr. Kinder? 10 A. Yes. 11 Q. And Mr. Kinder was authorizing BMI to send 12 your royalties to Mr. Dobishinsky, the music 13 administrator? 14 A. Yes. 15 Q. Was it Mr. Kinder who typically signed these 16 forms making that authorization? 17 A. This is not typical. I can't answer it that 18 way. 19 Q. Okay. What is not typical about it? 20 A. It is the first time I ever saw Ford sign an 21 agreement with a clearance form for BMI. 22 Q. Is it possible that Mr. Kinder was signing 23 the forms, but you just weren't aware of it? 24 A. Oh, we have the other forms. They were 25 submitted by the administrator. Or by SONY. They were</p>	<p style="text-align: right;">Page 598</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 the compositions or rather the shows that are listed in 3 the complaint with -- against Sunbow, okay? 4 A. Uh-huh. 5 Q. This is in Paragraph 11 of the amended 6 complaint. And the shows that are here are GI Joe, 7 Transformers, Visionaries -- 8 MR. MONAGHAN: Does it say shows? 9 MS. PHARES: Utilized in various Sunbow 10 Productions, all right? 11 Q. JEM and My Little Pony. 12 Now -- 13 A. What about Inhumanoids? 14 Q. That's not in our complaint? 15 A. Okay. 16 Q. Now, can you tell me for GI Joe did you 17 first write GI Joe the theme or tune or whatever you 18 identify as the basic music for G.B.I. or for Sunbow? 19 A. I didn't write it. 20 Q. Who wrote it? 21 A. Ford Kinder. 22 Q. But Kinder & Bryant wrote it, didn't they? 23 A. GI Joe main theme? 24 Q. Yes. 25 A. No. Ford Kinder wrote it when he was at</p>
<p style="text-align: right;">Page 597</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 submitted by the publisher. 3 Q. And who typically signed the forms and 4 authorized the publisher to send your royalties to BMI -- 5 I mean, to Mr. Dobishinsky? 6 A. The publisher submitted the clearances. 7 Q. I understand that, but BMI doesn't send your 8 royalties to anybody but you. That is, to you -- the two 9 of you, unless you authorize it. 10 Now, is Mr. -- did Mr. Ford -- Mr. Kinder 11 typically sign these agreements on behalf of Kinder & 12 Ford? 13 A. He didn't have any authority to sign any 14 agreement about my royalties. He couldn't authorize about 15 my royalties. 16 Q. You would have signed separate agreements 17 with authorizing these for -- for your royalties? 18 A. Yes. 19 Q. And you authorized Mr. Dobishinsky then to 20 receive your royalties? 21 A. Yes. In trust. 22 Q. Okay, thank you. 23 Now, let's go back to what we were saying 24 just before the break, and what I want to do in light of 25 your last testimony is I'm going to make a list here of</p>	<p style="text-align: right;">Page 599</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Michelin & Company. 3 Q. I see, okay. 4 So he wrote the main theme for the -- for 5 the Sunbow Production? 6 A. No, that was the main theme first Ford, 7 Griffin, Bacal, Hasbro. 8 Q. So it was a jingle? 9 A. Yes. 10 Q. So this one was written by Kinder at 11 Michelin? 12 A. Jingle. 13 Q. Jingle, thank you. 14 How about Transformers? 15 A. Well, you left one out. The GI Joe movie 16 theme. 17 Q. Just for the moment we're going to do -- 18 A. Do this? 19 Q. Yes. 20 A. Transformers. I wrote that. I wrote the 21 music. That's my music. 22 Q. And who wrote -- are there lyrics? 23 A. Yes. 24 Q. And who wrote those? 25 A. Joe Bacal.</p>

	Page 600		Page 602
1	CAROL ANNE BRYANT - CROSS/PHARES	1	CAROL ANNE BRYANT - CROSS/PHARES
2	Q. Okay.	2	Q. The answer is yes, no, or I don't know.
3	A. And Ford wrote a line. An important line.	3	A. Okay. I believe so.
4	Robots in Disguise.	4	Q. So you are saying it was a jingle, but you
5	Q. Okay, you wrote the music, he wrote the	5	are not sure?
6	lyrics.	6	A. I'm saying it's a jingle. At some point I
7	And this was?	7	think it was a jingle first.
8	A. A jingle.	8	Q. Okay.
9	Q. A jingle.	9	A. Yeah.
10	Okay. And then Visionaries?	10	Q. That was written by -- when you were part of
11	A. Visionaries -- it's right here. I wrote	11	Kinder & Bryant?
12	that.	12	A. Yes.
13	Q. Now, actually were you -- were you and Mr.	13	Q. So you did that work for G.B.I., right?
14	Kinder both at your company Kinder & Bryant when you wrote	14	A. Yes.
15	that?	15	Q. Okay. And then JEM?
16	A. Visionaries?	16	A. JEM, the JEM theme. JEM's complicated. The
17	Q. No, I'm sorry. Let's go back to	17	JEM theme. I wrote that music. That is my music.
18	Transformers. I left out one piece of information.	18	Q. Did Mr. Kinder do any work on JEM?
19	A. Okay.	19	A. Well, he wrote a version but they chose my
20	Q. When you wrote -- you mentioned you wrote	20	version.
21	the music and Mr. Bacal and Mr. Kinder wrote the lyrics;	21	Q. In the overall work, there is live music in
22	were you and Mr. Kinder already part of Kinder & Bryant?	22	JEM, isn't that correct?
23	A. Kinder & Bryant was open for business.	23	A. I was talking about first the theme, then I
24	Q. Okay. So we're going to put K & B here.	24	was going to give you the songs. But if you want me to do
25	Okay.	25	it --
	Page 601		Page 603
1	CAROL ANNE BRYANT - CROSS/PHARES	1	CAROL ANNE BRYANT - CROSS/PHARES
2	And Visionaries -- we'll go on.	2	Q. No, let's start overall, did you or Mr.
3	A. I wrote it.	3	Kinder write music or lyrics for JEM?
4	Q. You wrote the music?	4	A. Music.
5	A. I wrote the music, yes.	5	Q. Music. Not lyrics?
6	Q. And were there any lyrics?	6	A. Mr. Harman wrote the lyrics.
7	A. There were theme lyrics, but I was never	7	Q. All right. So for JEM -- I'm just going to
8	quite sure -- I mean, I didn't worry about it. We wrote	8	put K & B because there was so much music. And we'll put
9	to their lyrics. I don't know who the lyricist was for	9	Harman because Barry Harman wrote the lyrics?
10	sure.	10	A. M-A-N.
11	Q. When you say, "we wrote", who are you	11	Q. Sorry.
12	talking about?	12	And that was for a T.V. production; is that
13	A. Well, Ford and I wrote two versions of	13	correct?
14	everything, so that was my version.	14	A. Yes, but Barry didn't write the lyrics for
15	Q. Okay. And you don't remember who did the	15	the theme, and I really do think it is a separate case. I
16	lyrics?	16	can't make the same statements for the theme that I can
17	A. I don't know that I ever knew who did the	17	for the songs.
18	lyrics for sure.	18	Q. I understand. I'm not suggesting that
19	Q. I see. What you are meaning -- you are	19	Mr. Harman wrote lyrics for everything, but if he wrote
20	saying they provided you with lyrics and you wrote music	20	lyrics it was he that wrote them?
21	to it?	21	A. No. If there were lyrics Joe Bacal wrote
22	A. Right.	22	the lyrics for the theme, I believe.
23	Q. Now, was that a jingle?	23	Q. Okay.
24	A. You know, I used to know that and I actually	24	A. And Barry Harman wrote all of the lyrics for
25	have something that would confirm that.	25	the songs, I believe.

<p style="text-align: right;">Page 604</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Q. Okay. And you wrote -- Kinder & Bryant did 3 their work for JEM for whom? Sunbow? 4 A. For Sunbow. 5 Q. Because it was a T.V. production first? 6 A. A television show. 7 Q. T.V. Series. 8 Okay, and My Little Pony? 9 A. Again, the original My Little Pony song 10 which is -- like GI Joe -- Ford Kinder at Michelin 11 Company. And it was a jingle. 12 Q. So My Little Pony was initially done by 13 Kinder at Michelin and it was a jingle? 14 A. Yeah. 15 Q. And then did you write more music for it 16 when it was a T.V. production? 17 A. My Little Pony original song became the 18 theme song of the My Little Pony T.V. show. And I didn't 19 have anything to do with that. And I don't know what Ford 20 did. I left. 21 Q. Because you had left Kinder & Bryant by 22 then? 23 A. Yes. But then there were other My Little 24 Pony-Sunbow works. 25 Q. And did you work on those?</p>	<p style="text-align: right;">Page 606</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Is it possible that the -- that when you 3 were saying here that the theme for JEM was written first 4 for the jingle but the songs were written for the T.V. 5 program? 6 A. No. 7 Q. Well, the songs were written for the T.V. 8 program for JEM, weren't they? 9 A. Yes. 10 Q. And the songs were written for Sunbow when 11 they were making that T.V. program? 12 A. Yes. 13 Q. Okay. And the theme was -- you are saying 14 the theme was never a jingle first? 15 A. The theme was a theme first and a jingle 16 second. 17 Q. I see. 18 A. With the exception -- 19 Q. The other way around? 20 A. Yeah. 21 Q. Okay. All right. And so this jingle was 22 done for Michelin & Co., and the Transformers jingle was 23 first done for G.B.I., right? 24 A. Uh-huh. Yes. 25 Q. And the Visionaries work which you think was</p>
<p style="text-align: right;">Page 605</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. Yes. 3 Q. While you were at Kinder & Bryant? 4 A. Yes. 5 Q. So you are saying that there was another one 6 in here? Someplace? Or before -- I shouldn't do that 7 because this is not chronological. I beg your pardon, 8 that is confusing. 9 A. My Little Pony and Friends, another T.V. 10 show, I wrote that with Ford. His six bars in the 11 middle -- we discussed that yesterday, harp back to this 12 melody. 13 Q. I see. 14 A. And that was in '86, '87, something like 15 that. 16 Q. That was an independent production for 17 Sunbow? 18 A. It was a T.V. theme. 19 Q. It was a T.V. theme. 20 And you are saying that your theme harkened 21 back to the -- 22 A. The song was very different. It just had a 23 musical instrumental bridge, short six bars, where it 24 quoted the original melody of the theme. 25 Q. I see.</p>	<p style="text-align: right;">Page 607</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 a jingle was also done for G.B.I.? 3 A. No, it was a jingle. It was a jingle. 4 Q. And it was done for G.B.I.? 5 A. Yes. 6 Q. And for JEM you had -- you did that for 7 Sunbow? 8 A. Yes. 9 Q. And My Little Pony was a jingle that you did 10 for G.B.I.; is that correct? 11 A. It was a jingle that Ford Kinder wrote when 12 he worked for Michelin for G.B.I. 13 Q. You wrote it while he was at Michelin, and 14 presumably they had an arrangement with G.B.I. Okay. 15 So all of the works that were done for 16 G.B.I. would have had a G.B.I. contract, isn't that 17 correct? 18 A. I can't confirm that. 19 Q. But that was the way you testified that you 20 had done business, isn't that correct? 21 A. I don't think I testified to that. I said 22 we had a working agreement and it was the way we worked on 23 all these jobs for -- 24 Q. Do you still have Defendant's Exhibit B and 25 C there?</p>

<p style="text-align: right;">Page 608</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. Are those the contracts? 3 Q. Yeah. 4 A. Yeah, got them. 5 Q. Yeah. So those were the kinds of agreements 6 that you did with G.B.I. when you wrote jingles, isn't 7 that correct? 8 A. Something like this. 9 Q. Okay. So you had something like this for 10 all the jingles that you did, that Kinder & Bryant did for 11 G.B.I.? 12 A. I'm only looking at these two. 13 Q. Right. 14 A. So I don't know if they were there for all 15 of them. 16 Q. But they were something like that. 17 A. Well, you read me something where I said 18 there's always something, there's always some kind of 19 piece of paper that's involved in these. 20 Q. Okay. I want to go back to something that 21 we kind of got sidetracked from earlier. And do you 22 remember when we talked about creative fees? 23 A. Yes. 24 Q. I'm still trying to figure out how you guys 25 kept track of your creative fees.</p>	<p style="text-align: right;">Page 610</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. We wrote a theme for My Little Pony and 3 Friends. 4 Q. That's all you wrote? 5 A. Yes. 6 Q. So there wasn't very much music? 7 A. My understanding was it was an opening and 8 closing theme. I -- you know -- 9 Q. Did you write the cues? 10 A. Sometimes when I do an arrangement often 11 they take -- always gave them what we call the track only, 12 not the voices. And often that winds up being used as a 13 bed for music within the shows. And that's one thing. 14 And the other way it's used is often the film score 15 arranger orchestrator quotes the melody of the theme 16 throughout the -- his score and -- but it's our melody. 17 Q. So you are saying that you really didn't 18 have to write very much music for each one of these. You 19 would write the theme and then it would be used just sort 20 of underneath the photography? 21 A. Well, they got a lot of use out of it. It 22 is a good thing, you know. 23 Q. But it wasn't different music. It was the 24 same theme that was being used underneath? 25 A. Quite a bit, yeah. That's the job. I've</p>
<p style="text-align: right;">Page 609</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 In other words, I'm assuming that, you know, 3 you said you did all this work for JEM and you had to 4 write several songs, and then they chose some; how many 5 songs were there for each JEM episode? 6 A. Three. 7 Q. And there were 65 episodes, isn't that 8 right? 9 A. Yes. 10 Q. It's a lot of songs. 11 A. But it's not 195 because we didn't do three 12 for everyone. 13 Q. I just asked you -- 14 A. It is a lot of songs. 15 Q. It is a lot of songs? 16 A. Yeah. 17 Q. So when you worked on another -- on another 18 series for Sunbow, presumably your fee wasn't as great on 19 those; is that correct? 20 A. As great as on what? On the other show? 21 Q. That you did for Sunbow. 22 A. We didn't do any other shows. 23 Q. You didn't do any other agreements? 24 What about the My Little Pony? You are 25 talking about My Little Pony and Friends?</p>	<p style="text-align: right;">Page 611</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 done that work and it very much gives it cohesiveness to 3 the show, and you ride the theme throughout the score as 4 much as you can. I think probably even more so for 5 children. 6 Q. Did you ever sign contracts with Kinder & 7 Bryant? 8 A. I remember signing a lot of administration 9 contracts for Kinder & Bryant as a leader and a contractor 10 and a signatory. I did a lot of that work. 11 Q. Are you talking about like music guild 12 agreements, those kinds of things? 13 A. The American Federation of Musicians Screen 14 Actor's Guild and AFTRA, I signed those agreements. A lot 15 of them carried over from my other company, my signatory 16 status. I think I signed most of those or many anyway. 17 Q. What about the ones that you signed for 18 Kinder & Bryant, which ones were those? 19 A. Everything we worked on. 20 Q. You signed all the agreements you worked on? 21 A. Just about. Ford must have signed some at 22 some point, but I was already a signatore. 23 Q. You have testified -- 24 A. We were able to jump right into business 25 because of that, you know.</p>

<p style="text-align: right;">Page 612</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Q. You testified, however, that you didn't 3 think that Ford Kinder would have signed an agreement 4 without discussing a deal with you first, have you not? 5 A. Yes. If it was something that we generally 6 worked with I wouldn't expect that necessarily. But if it 7 was something new and different he would definitely tell 8 me what it was. 9 Q. Didn't you state under oath in your 10 affidavit in April, and you were talking about the 11 unsigned JEM Agreement, the work-for-hire agreement 12 between Kinder & Bryant and Sunbow, that I do not believe 13 that my former partner Ford Kinder would have signed any 14 agreement without discussing it in detail with me. That 15 was our practice in all important matters. 16 A. I said that. 17 Q. And writing three times 65 songs is a pretty 18 important matter, isn't it? 19 A. Sure is. 20 Q. It's a lot of income, isn't it? 21 A. A lot of arranging fees. 22 Q. Well, you wrote original songs for JEM, not 23 just arrangements, isn't that right? 24 A. We were paid a fee for production. That's 25 arrangements --</p>	<p style="text-align: right;">Page 614</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 the chosen version, so three a week. So it was three 3 arrangements. 4 Q. So -- 5 A. And so we did six piano demos and I did 6 three final arrangements. \$2200 for each set of piano 7 demos and arrangement. 8 Q. \$2200 for each song; is that right? Or 9 isn't that right? 10 A. Yeah, for the ultimate choice of the final 11 song fully produced. 12 Q. And so for each of those three you got 13 \$2200; is that right? 14 A. To do an arrangement. Not to write a song. 15 Q. And for each of those songs -- so we are 16 talking about 185 -- 185 songs, right? If you want to -- 17 A. It -- 18 Q. If at some point in the past, Miss Bryant, 19 my multiplication was off I stand corrected. But at least 20 when I multiply 65 times three I get 195. 21 A. Theoretically, that would be -- 22 Q. Is your arithmetic coming out the same as 23 mine? 24 A. Well, I just happen to know that we have a 25 tally of 154 songs that we wrote. I wish it was 195. But</p>
<p style="text-align: right;">Page 613</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Q. I'm just asking you -- 3 A. Oh, yes, we did. 4 Q. You were paid for writing the songs, for 5 those three songs for every episode of JEM? 6 A. I'm sorry, we were not. 7 Q. You were not? You were not paid? 8 A. We were not paid. We were paid arranging 9 fees. Our compensation was royalties. 10 Q. Only royalties? 11 A. Well, I don't do arrangements for free. 12 \$2200 paid our production fee. 13 Q. When you wrote songs for the JEM 14 productions, you are saying that you only wrote 15 arrangements? I thought you said those were original 16 songs? 17 A. They were original songs. Six we wrote for 18 three shows, three episodes -- I mean, I'm sorry, three 19 songs per episode. Two versions of each. Two piano demos 20 for each song. Joe Bacal -- we sent them to Joe, and he 21 picked his choice on each of the three songs per episode. 22 Q. Right. 23 A. Then I was told which ones to go ahead with. 24 My version. Ford's version. As long as one of our 25 versions. And it always was I would do the arrangement on</p>	<p style="text-align: right;">Page 615</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 it was 154. 3 Q. You are saying it was only 150? 4 A. I said 154. 5 Q. Right. 6 Where do you have the tally for that 154? 7 A. Right in my JEM catalog. 8 Q. For the songs? 9 A. Right in my BMI catalog. I misspoke. I'm 10 sorry. 11 Q. But now I want to come back, though, to what 12 I -- where I was when we took that little flyer -- is when 13 you testified in April that Mr. Kinder wouldn't have 14 signed any agreement without discussing it in detail 15 because it was your practice in all important matters for 16 him to discuss it. Doesn't that mean that before Kinder 17 signed agreements on behalf of Kinder & Bryant he 18 discussed them with you? 19 A. This is a special agreement. 20 Q. Did you hear what I asked you? I'm not 21 talking about a particular agreement. 22 A. Yes. Answered all important matters. 23 Q. He discussed them with you before he signed? 24 A. Well, he wouldn't have signed that agreement 25 without me. He couldn't.</p>

<p style="text-align: right;">Page 616</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Q. Because he couldn't because you were 3 partners you mean? 4 A. Because we were both independent song 5 writers. He can't sign over my ability to -- he doesn't 6 have the authority to sign over my rights as a writer. He 7 can bind the company to, I would think, a production 8 agreement, but -- 9 Q. He? 10 A. -- individual writer's rights he has no 11 authority to give them away. I would have to do that. 12 Q. He could sign for the company on behalf of 13 Kinder & Bryant, couldn't he? 14 A. But royalties are an individual composer. 15 Q. That's just a yes or a no, or I don't know. 16 A. Could you repeat that? 17 Q. Yes. 18 Mr. Kinder could sign a production agreement 19 on behalf of Kinder & Bryant, couldn't he? 20 A. A production agreement? 21 Q. Right. 22 A. I believe so. 23 Q. Just like he could sign an agreement with 24 G.B.I., like Exhibits B and C in front of you. 25 He signed those on behalf of Kinder &</p>	<p style="text-align: right;">Page 618</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 songs. 3 Q. Now, hang on, just so that neither you nor 4 the Court nor I am confused. I'm not talking about -- not 5 saying anything about how you are going to be paid, how 6 you are going to be paid your writer's share of the 7 performance royalties. I'm not talking about how you were 8 going to get paid those monies. 9 I'm talking about couldn't he enter into a 10 production agreement with Sunbow and agree that Kinder & 11 Bryant would work-for-hire? 12 A. What would this production agreement 13 encompass? 14 Q. It would say just something like we'll use 15 the G.B.I. agreement, just as an example. It would say 16 something like, you know, we're engaging you to write 17 songs for our T.V. production. It would say you are going 18 to do that as a work-for-hire. Everything you deliver to 19 us will be work-for-hire and we can do X, Y and Z with 20 them. And then it would lay out the amounts of creative 21 fees that you were going to be paid. And then it might 22 even say and, by the way, you will get all the writer's 23 share of the public performance royalties. And then it 24 might even also say something like and there are certain 25 other music publishing rights that you get. And it would</p>
<p style="text-align: right;">Page 617</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Bryant, didn't he? 3 A. It appears so. 4 Q. Yes. 5 And in that agreement he was agreeing on 6 behalf of Kinder & Bryant that you were -- you, the 7 organization, were working-for-hire, didn't he? 8 A. Yes. According to this, yes. 9 Q. And he could have signed a production 10 agreement with Sunbow agreeing that you were working for 11 hire, couldn't he? 12 A. Let me think about that. 13 I really don't know how to answer that. Are 14 you talking about JEM? 15 Q. I'm just asking you, as a general corporate 16 matter of your company, Mr. Kinder as the president could 17 sign a production agreement for the company, couldn't he? 18 A. I don't believe he could. 19 Q. Why not? Wasn't he the president of the 20 company? 21 A. Yes. 22 Q. Didn't he sign the Kinder-Bryant agreement? 23 A. Well, if he's going to write all the songs 24 and do all the work maybe he could, but I don't think he 25 could do that with Sunbow because it was all feature</p>	<p style="text-align: right;">Page 619</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 be all laid out in that agreement. And then at the bottom 3 couldn't Mr. Kinder have signed for the company as the 4 president, just like he did for G.B.I. on this one? It is 5 not really very different except it is a little bit -- 6 except it would give you more rights. 7 A. Well, I don't want to answer that in the 8 abstract. I don't think he really could. We're talking 9 about feature songs for which we were paid nothing as a 10 creative fee. And, I'm sorry, I just can't answer it in 11 the abstract. If you want to ask me about a specific 12 agreement I'll try to answer it, but -- 13 Q. You and Mr. Kinder worked for Kinder & 14 Bryant, didn't you? 15 A. We both had our own corporations. 16 Q. That's okay. 17 A. We worked -- 18 Q. A corporation can be part of another 19 corporation? 20 A. Right. Right. Just so you know. 21 Q. And the two of you worked for Kinder & 22 Bryant, didn't you, and the music you created Kinder & 23 Bryant delivered to its customers, right? 24 A. Kinder & Bryant produced, yes. 25 Q. Right.</p>

<p style="text-align: right;">Page 620</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. And there's a company called Kinder & Bryant 3 or there was. 4 Q. Right. 5 A. And there are two people who are called 6 Kinder & Bryant who are individuals who have individual 7 rights. 8 Q. I'm talking about -- 9 A. K & B. 10 Q. I'm talking about K & B. Exactly. 11 A. Okay. 12 Q. And it could be, by the way -- and the kind 13 of the agreement I'm talking about, that K & B would agree 14 that each of Kinder & Bryant would receive certain rights, 15 for example, the writer's share of their performance 16 royalties.</p> <p>17 Now, couldn't Mr. Kinder have signed an 18 agreement on behalf of K & B? He's the president of the 19 company. Who else could have signed such an agreement?</p> <p>20 A. The chairman. Me. 21 Q. But he could have signed one too, couldn't 22 he? 23 A. I don't think the chairman could have 24 either. I think it was Ford's individual rights and my 25 individual rights. It would have to be something else</p>	<p style="text-align: right;">Page 622</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 A. We discussed the fact that we didn't like 3 the terms, I remember, and there really was no creative 4 fee. There was a production fee. And I know Ford was 5 concerned about a show that was centered on songs, on 6 original songs, and I was too, and he wanted the 7 publishing. I remember that. But that a show like that 8 could wind up on CDs or in VHS. In the 80s that was 9 happening.</p> <p>10 Q. Well, do you remember discussing -- do you 11 remember his discussing with you the terms of any other 12 agreement with Sunbow?</p> <p>13 MR. MONAGHAN: Your Honor, it's time for a 14 parole evidence objection. If there is a 15 contract, fine. Produce it. If not, we're 16 talking about what Miss Phares is actually trying 17 to get in as terms of an agreement that we don't 18 have before the Court. It is a parole evidence 19 issue.</p> <p>20 THE COURT: Well, it is cross-examination. 21 I'm going to allow her -- counsel to go on for 22 eight more minutes, then we are going to quit.</p> <p>23 THE WITNESS: I have a problem with 24 answering about an abstract contract that doesn't 25 exist. I said I would be happy to look at</p>
<p style="text-align: right;">Page 621</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 that would allow one of us or the other to enter into an 3 agreement that gave the other person's rights away. 4 Q. Well, I'm assuming -- 5 THE COURT: Hold on a second. 6 A. I'm having trouble with the abstract. 7 THE COURT: I think you are asking this 8 witness for a legal conclusion. Now, as far as 9 I'm concerned a legal conclusion is that a 10 president can bind a corporation. 11 Let's go on. 12 MS. PHARES: Okay. 13 THE WITNESS: A corporation, but not an 14 individual. If that's the question she's trying 15 to get to. 16 THE COURT: Let's go on. 17 Q. Just as we sit here today, do you remember 18 whether or not Mr. Kinder ever told you about signing an 19 agreement, say an agreement for JEM with Sunbow? 20 A. JEM was a big problem. And, as I said, we 21 discussed JEM. It was a real problem for us. 22 Q. You remember discussing it? 23 A. Yes. 24 Q. What was the problem you were discussing? 25 Were you discussing the agreement?</p>	<p style="text-align: right;">Page 623</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 something that -- 3 THE COURT: Just please try to answer the 4 questions. 5 Go ahead. 6 BY MS. PHARES: 7 Q. Do you remember Mr. Kinder talking with you 8 about the terms of any other agreement? 9 MR. MONAGHAN: Object. Hearsay. 10 THE COURT: Overruled. 11 A. About any other agreement ever? 12 Q. With Sunbow. 13 A. I don't remember other agreements with 14 Sunbow. 15 Q. Do you think you only had one agreement with 16 Sunbow? 17 A. I know we had one that was discussed, and 18 that was the unsigned JEM Agreement. That was the only 19 show we did for Sunbow. 20 Q. And even if you don't remember signing an 21 agreement with Sunbow, isn't it possible that Mr. Kinder 22 signed an agreement? 23 MR. MONAGHAN: Anything is possible. 24 Objection. 25 THE COURT: Sustained as to form.</p>

<p style="text-align: right;">Page 624</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 Q. Just because you don't remember signing an 3 agreement with Sunbow doesn't mean that it was never 4 signed, does it? 5 A. I would say that if I don't remember signing 6 it, I can't say that it was never signed by someone. But 7 it wasn't signed by me, that I can remember. 8 Q. And just because you didn't sign an 9 agreement doesn't mean that Mr. Kinder didn't sign it, 10 isn't that right? 11 A. Not necessarily. Depends on what he was 12 signing. 13 Q. But Mr. Kinder could have signed an 14 agreement after discussing it with you without your 15 knowing whether he'd signed it, isn't that right? 16 A. That's pretty wild. I think if he discussed 17 it with me I would have remembered it. 18 Q. You could have remembered an agreement, but 19 if he signed it you wouldn't know whether he had signed 20 it, right? You wouldn't have seen him sign it if he did 21 it by himself, would you? 22 A. This is very creepy. I'm sorry. I have to 23 think this through. 24 He discusses something with me and I leave 25 the room and I don't know whether he ever executed it or</p>	<p style="text-align: right;">Page 626</p> <p>1 - MOTION - 2 here, is pretty active every day. But if it will 3 be of assistance to you, you may leave them here. 4 Do we have room in that -- 5 COURT OFFICER: There is room in that 6 closet. 7 THE COURT: There is room in that closet and 8 it is locked. I think you'll lock it? 9 COURT OFFICER: Yes. 10 THE COURT: All right, you may do that. 11 That is up to you. 12 The other thing is I see this as a 40 to 13 45-day trial, and you completed four days of it. 14 I want you to think long and hard about what you 15 are doing with your future. I'm here every day. 16 If I don't try this case, I try another one. So, 17 from my standpoint, I'm at your service. But I've 18 talked to both sides probably at more length than 19 you wanted about settling this case. Think about 20 that carefully. 21 What you are going to have to do is the 22 Plaintiff will call the court clerk as of Monday 23 and get some dates from him and some more dates 24 that I'll be open hopefully for a week or 25 something and we're going to try this hopefully a</p>
<p style="text-align: right;">Page 625</p> <p>1 CAROL ANNE BRYANT - CROSS/PHARES 2 not; is that what you are saying? 3 Q. How about this: Supposing you are together 4 in that big room you were in and he describes the deal 5 that you are going to have. If he then later, after 6 you've gone home for the evening, signed the agreement, 7 you wouldn't know whether he'd signed the agreement, 8 right? 9 MR. MONAGHAN: We'll stipulate if she didn't 10 know he signed the agreement she didn't know he 11 signed the agreement. 12 A. Yes. 13 Q. He could have signed the agreement for you, 14 right? 15 A. Yes, I guess, if I didn't know. 16 MS. PHARES: Your Honor, I'm at a breaking 17 point even though I have not completed my last 18 three minutes. 19 THE COURT: All right, there's a couple of 20 housekeeping things I want to talk to you about. 21 One is I understand from the court officer that 22 some of you want to leave some of these documents 23 here? If you do, I want you to understand that we 24 are not responsible if anything happens to any of 25 them. This courtroom, as you well know from being</p>	<p style="text-align: right;">Page 627</p> <p>1 - MOTION - 2 week at a time until it gets done. 3 MS. PHARES: Your Honor, before we finish 4 for the day I would like to make a motion to 5 dismiss the claims against Sunbow with respect to 6 all of the T.V. productions named in the 7 complaint, except JEM, because the work was 8 originally done for G.B.I. which is not a 9 Defendant in the case. 10 MR. MONAGHAN: In the middle of cross? I 11 have not finished our case. 12 THE COURT: Well, I'm not going to have any 13 discussion about that now. I will take it up next 14 time we get together. Although, I would tell you 15 that probably I will let the Plaintiff put in the 16 remainder of her case before we do any dismissing 17 of anything. 18 All right, have a good weekend. 19 MR. MONAGHAN: Thank you. 20 (Court Adjourned: 4:10 p.m.) 21 oo</p>

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1	CERTIFICATION		1
2			2
3	I, Elizabeth A. Kent, Senior Court Reporter for the State of New York, do hereby certify the foregoing to be true and accurate, as taken by me on July 9, 2004, before the Hon. Andrew P. O'Rourke, J.S.C.		3
4			DEFENDANTS'
5			4
6			5 A Jingle. 497 499
7			6 B Transformers agreement, 4-8-88. 561 569
8			7 C Visionaries agreement, 4-8-88. 561 569
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15	DVD Jem. 254 255		
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